

LEGISLATIVE RESEARCH COMMISSION

NONDEPOSITORY TRUST COMPANIES AND FAMILY TRUST COMPANIES



REPORT TO THE
2000 SESSION OF THE
1999 GENERAL ASSEMBLY
OF NORTH CAROLINA

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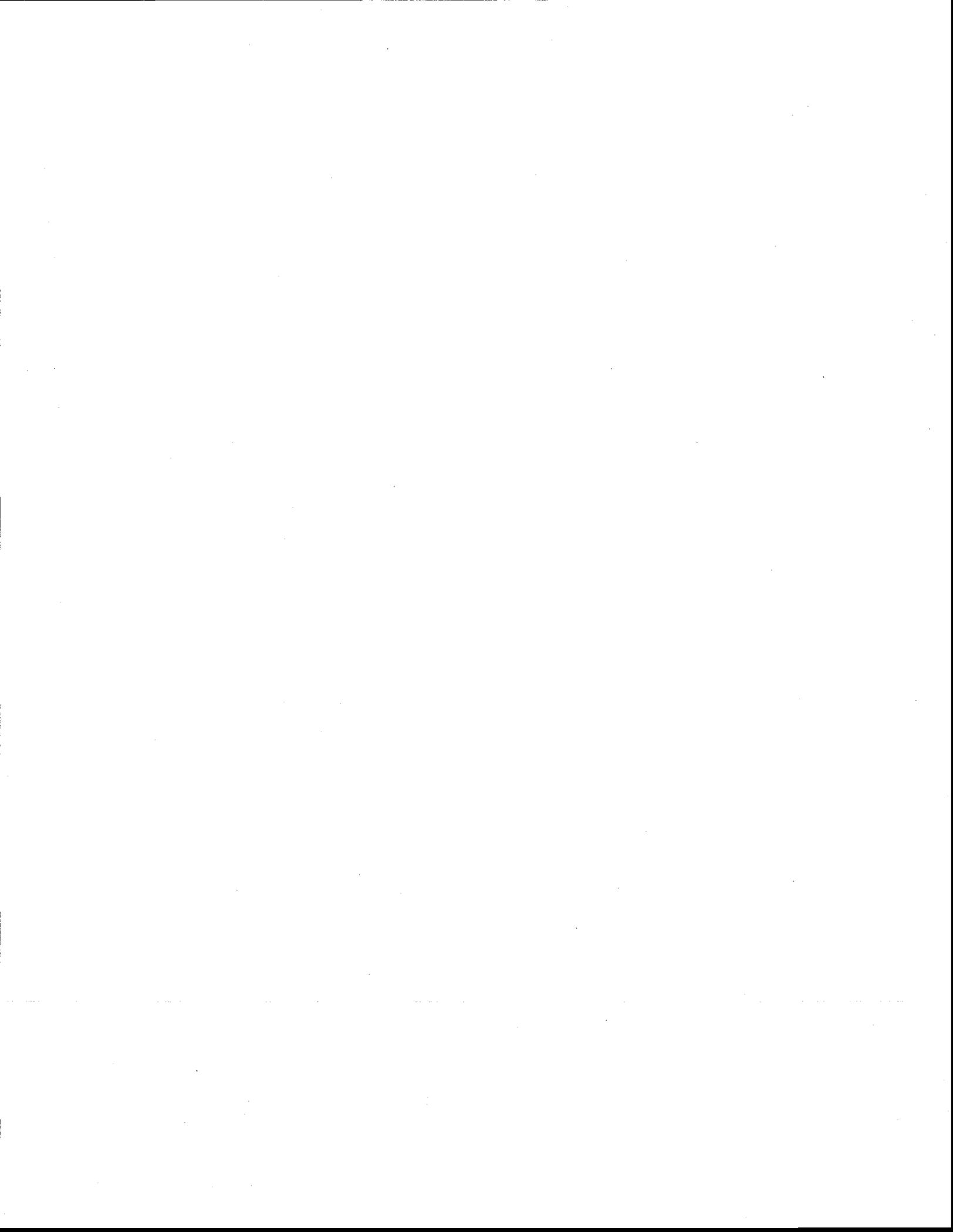
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TABLE OF CONTENTS

LETTER OF TRANSMITTAL	i
LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP	ii
PREFACE.....	1
COMMITTEE PROCEEDINGS	3
FINDINGS AND RECOMMENDATIONS.....	5
APPENDICES	7
RELEVANT PORTIONS OF THE 1999 STUDIES BILLS, CHAPTER 395 OF THE 1999 SESSION LAWS (FIRST SESSION).....	7
MEMBERSHIP OF THE LRC COMMITTEE ON NONDEPOSITORY TRUST COMPANIES AND FAMILY TRUST COMPANIES	9
LEGISLATIVE PROPOSAL I – A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CHARTERING OF INDEPENDENT TRUST COMPANIES AND TO PERMIT BANKS AND TRUST COMPANIES TO CONDUCT A TRUST BUSINESS ON AN INTERSTATE BASIS, AND A SECTION-BY-SECTION ANALYSIS OF THE BILL.....	10



STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601



May 4, 2000

TO THE MEMBERS OF THE 1999 GENERAL ASSEMBLY (REGULAR SESSION 2000):

The Legislative Research Commission herewith submits to you for your consideration its 2000 final report on the regulation of nondepository trust companies and the authorization of family trust companies. The report was prepared by the Legislative Research Commission's Committee on Nondepository Trust Companies And Family Trust Companies pursuant to G.S. 120-30.17(1).

Respectfully submitted,


James B. Black
Speaker of the House


Marc Basnight
President Pro Tempore

Cochairs
Legislative Research Commission



1999 - 2000

LEGISLATIVE RESEARCH COMMISSION

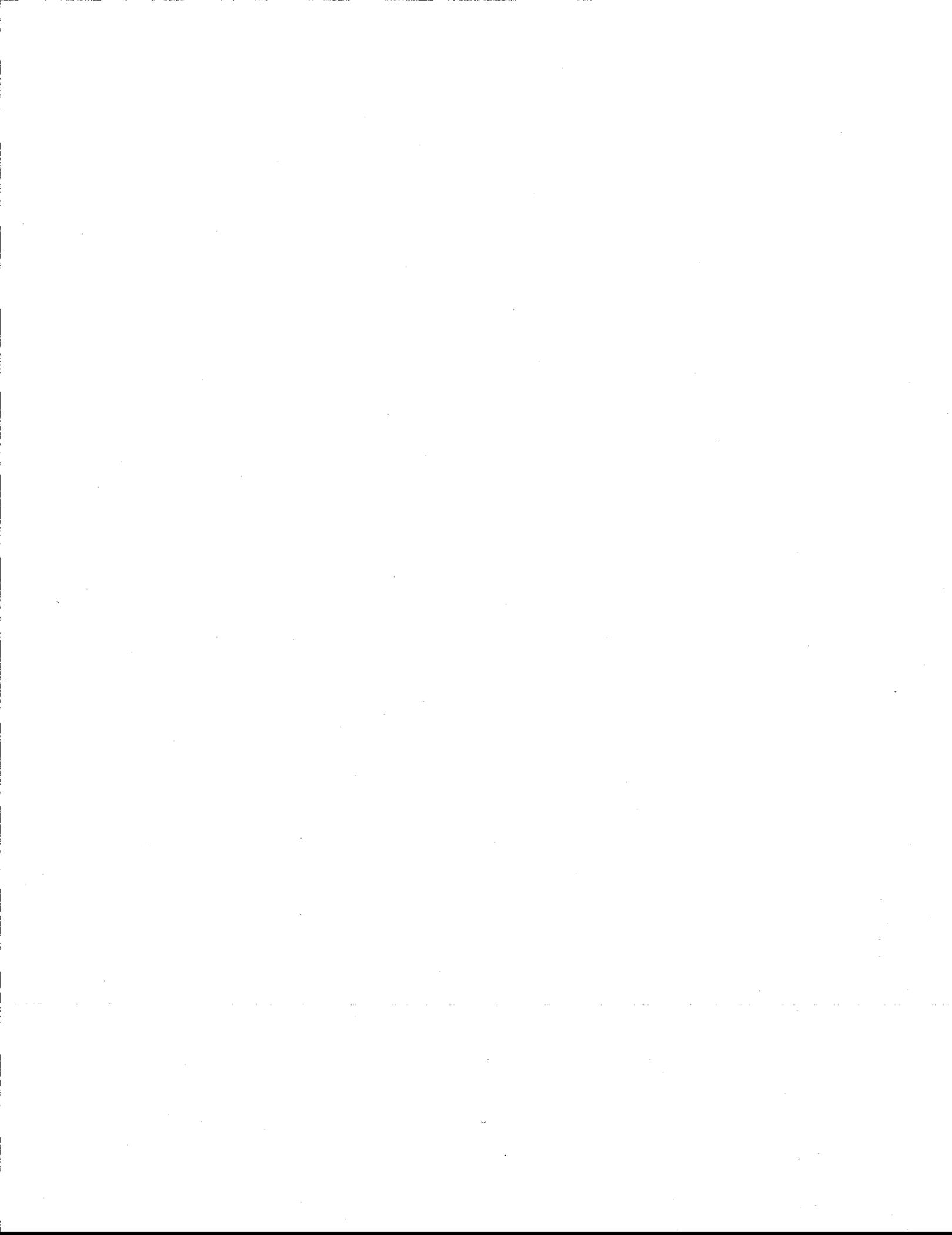
MEMBERSHIP

President Pro Tempore of
the Senate
Marc Basnight, Cochair

Senator Austin M. Allran
Senator Linda D. Garrou
Senator Jeanne H. Lucas
Senator R.L. "Bob" Martin
Senator Ed N. Warren

Speaker of the House
of Representatives
James B. Black, Cochair

Rep. James W. Crawford, Jr.
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Rep. Steve W. Wood



PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1998 Session and 1999 Sessions, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of the regulation of nondepository trust companies and the authorization of family trust companies was authorized by Section 2.1(1)i. of Part II of Chapter 395 of the 1999 Session Laws (Regular Session, 1999). Part II of Chapter 395 allows for studies authorized by that Part for the Legislative Research Commission to consider Senate Bill 940 in determining the nature, scope and aspects of the study. Section 1 of Senate Bill 940 reads in part: "If the

Commission undertakes the study, it may examine (1) the extent to which nonresident bank and trust companies may engage in the trust business in North Carolina; (2) the feasibility of granting resident trust companies the authority to engage in an interstate trust business; and (3) whether or not there should be authority to organize and operate a family trust company." The relevant portions of Chapter 395 and Senate Bill 940 are included in Appendix A.

The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Government Regulation Grouping area under the direction of Senator Ed Warren. The Committee was chaired by Senator Ed Warren and Representative Henry M. Michaux, Jr. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the 1999-2000 biennium.

COMMITTEE PROCEEDINGS

First Meeting -- March 20, 2000

At its organizational meeting on March 20, 2000, the Nondepository Trust Companies and Family Trust Companies Study Committee first reviewed its study charge. Three main areas were identified as needing study:

- (1) The extent to which nonresident bank and trust companies may engage in the trust business in North Carolina;
- (2) The feasibility of granting resident trust companies the authority to engage in an interstate trust business; and
- (3) Whether or not there should be authority to organize and operate a family trust company.

Hal Lingerfelt, Commissioner of Banks, addressed the Committee and gave an overview of the proposed legislation. He explained that North Carolina currently has several nondepository trust companies that have been operating very successfully in filling a very important market need to the citizens of the State. Commissioner Lingerfelt said that the purpose for requesting new legislation was to clarify the statutory authority for those trust companies and to assist them in better reporting their activities to the Banking Commission. Under current law, a nondepository trust company is created as a bank whose charter limits its activities to trust matters. While many of the laws applicable to a deposit-taking institution also apply to nondepository trust companies, many of the other provisions only apply to banks and constitute an unnecessary burden for a trust company. For these reasons, the Commissioner is recommending that these trust companies be looked at as the unique entity that they are. Applicable rules, regulations, and the law itself need to be addressed to the activities that the trust companies are actually engaging in.

McNeil Chestnut, Assistant Attorney General for Banking, was introduced to summarize the bill. Mr. Chestnut's summary of the proposed legislation is attached (Attachment 2). This bill is based on a model act recommended by the national Conference of State Banking Supervisors. It has been adopted in whole by 25 states and adopted in part to modify existing law in another 9 states.

Mr. Chestnut explained that this bill would strengthen and modernize the laws governing trust business on an interstate basis and provide express authority for the formation and regulatory oversight of nonbank (nondepository) trust companies, including private trust companies, often referred to as family trust companies.

Mr. Chestnut said that this proposed legislation had been sent for comment to the four existing North Carolina trust companies and four North Carolina law firms that represent trust companies. The bill has also been sent to the North Carolina Bankers Association for their review and comments.

Senator Warren indicated that with the Committee's consent, the staff would be asked to prepare a draft report for the Committee's consideration that would recommend the adoption of the proposed legislation by the 2000 Short Session.

Second Meeting -- April 27, 2000

The Committee held its final meeting on April 27, 2000. The Committee reviewed and approved its report to the Legislative Services Commission for the 2000 Short Session.

FINDINGS AND RECOMMENDATIONS

FINDINGS

During its meeting on the issue of regulation of nondepository trust companies and the authorization of family trust companies, the Committee found that there were currently four banks in North Carolina whose charters limit their operation to nondepository trust activities and at least two other entities in the process of being chartered as trust companies. Because there is no specific law in North Carolina currently governing the creation and regulation of nondepository trust companies other than as a bank, all existing trust companies are required to comply with all the laws applicable to banks, including the reporting requirements applicable to activities the trust companies do not engage in.

The Committee also found that a model act for the creation and regulation of trust companies had been proposed by the national Conference of State Bank Supervisors. Twenty-five states have already adopted the model act, and 9 other states adopted portions of the model act to supplement their current laws so as to conform to the model act.

The Committee also found that while both State and federal law authorized interstate branching and interstate banking, because North Carolina does not recognize trust companies chartered in other states as being qualified to do business in North Carolina, North Carolina's trust companies were prevented from doing business in other states. In order for North Carolina trust companies to be able to do interstate trust business it will be necessary for North Carolina to recognize and allow out-of-state trust companies to do business in this State under a reciprocal arrangement with the home state of the out-of-state trust company.

The Committee found that by adoption of the model act the Commissioner of Banks would have the necessary regulatory authority over trust companies, but these trust companies would only have to comply with the law related to their trust business and not other banking regulations

and laws that did not apply to their business operations. The Committee found that the consumers of these trust companies' services would have the same protections as provided by current law, but the regulatory requirements for the trust companies would be streamlined. The Committee also found that North Carolina trust companies would benefit by being able to do business on an interstate basis, and that the consuming public would benefit from out-of-state trust companies being able to do business in North Carolina, without the investments of the North Carolina consumers being placed at any greater risk.

RECOMMENDATION

That the General Assembly adopt the model Trust Company Act adopted by the national Conference of State Banking Supervisors, as modified to conform to North Carolina law. (See LEGISLATIVE PROPOSAL I at Appendix C).

APPENDIX A

CHAPTER 395
1999 Session Laws (1999 Session)

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE VARIOUS STUDY COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO AMEND OTHER LAWS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1999".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Section 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 1999 Regular Session of the 1999 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The following groupings are for reference only:

(1) Governmental Agency and Personnel Issues:

-
- i. Regulation of nondepository trust companies and authorization of family trust companies (S.B. 94 [940] Warren).
-

Section 2.2. Committee Membership. -- For each Legislative Research Commission committee created during the 1999-2001 biennium, the cochairs of the Legislative Research Commission shall appoint the committee membership.

Section 2.3. Reporting Date. -- For each of the topics the Legislative Research Commission decides to study under this Part or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1999 General Assembly, 2000 Regular Session, or the 2001 General Assembly.

Section 2.4. Funding. -- From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

PART XXIII.-----EFFECTIVE DATE AND APPLICABILITY

Section 23.1. Except as otherwise specifically provided, this act becomes effective July 1, 1999. If a study is authorized both in this act and the Current Operations Appropriations Act of 1999, the study shall be implemented in accordance with the Current Operations Appropriations Act of 1999 as ratified.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

SENATE BILL 940

Short Title: Study Nondepository Trust Co.

(Public)

April 14, 1999

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO
STUDY THE REGULATION OF NONDEPOSITORY TRUST COMPANIES AND
THE AUTHORIZATION OF FAMILY TRUST COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission may study whether the General Assembly should enact legislation to regulate nondepository trust companies. If the Commission undertakes the study, it may examine:

- (1) The extent to which nonresident bank and trust companies may engage in the trust business in North Carolina;
- (2) The feasibility of granting resident trust companies the authority to engage in an interstate trust business; and
- (3) Whether or not there should be authority to organize and operate a family trust company.

Section 2. The Legislative Research Commission, if it undertakes this study, may make an interim report of its recommendations to the 2000 Regular Session of the 1999 General Assembly and a final report to the 2001 General Assembly.

Section 3. This act is effective when it becomes law.

APPENDIX B

**NONDEPOSITORY TRUST COMPANIES AND
FAMILY TRUST COMPANIES COMMITTEE (LRC)**

1999-2001

S.L. 1999-395

Pro Tem's Appointments

Sen. Ed Warren, Cochair
101 W. 14th St., Suite 101
Greenville, NC 27834
252/758-1543

Sen. Kay Hagan
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Greensboro, NC 27408
336/379-8721

Sen. Robert Rucho
400 Trafalgar Place
Matthews, NC 28105
704/364-3770

Sen. Larry Shaw
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Fayetteville, NC 28302
910/323-5303

Sen. R.C. Soles, Jr.
PO Box 6
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Staff

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Rep. John Bridgeman
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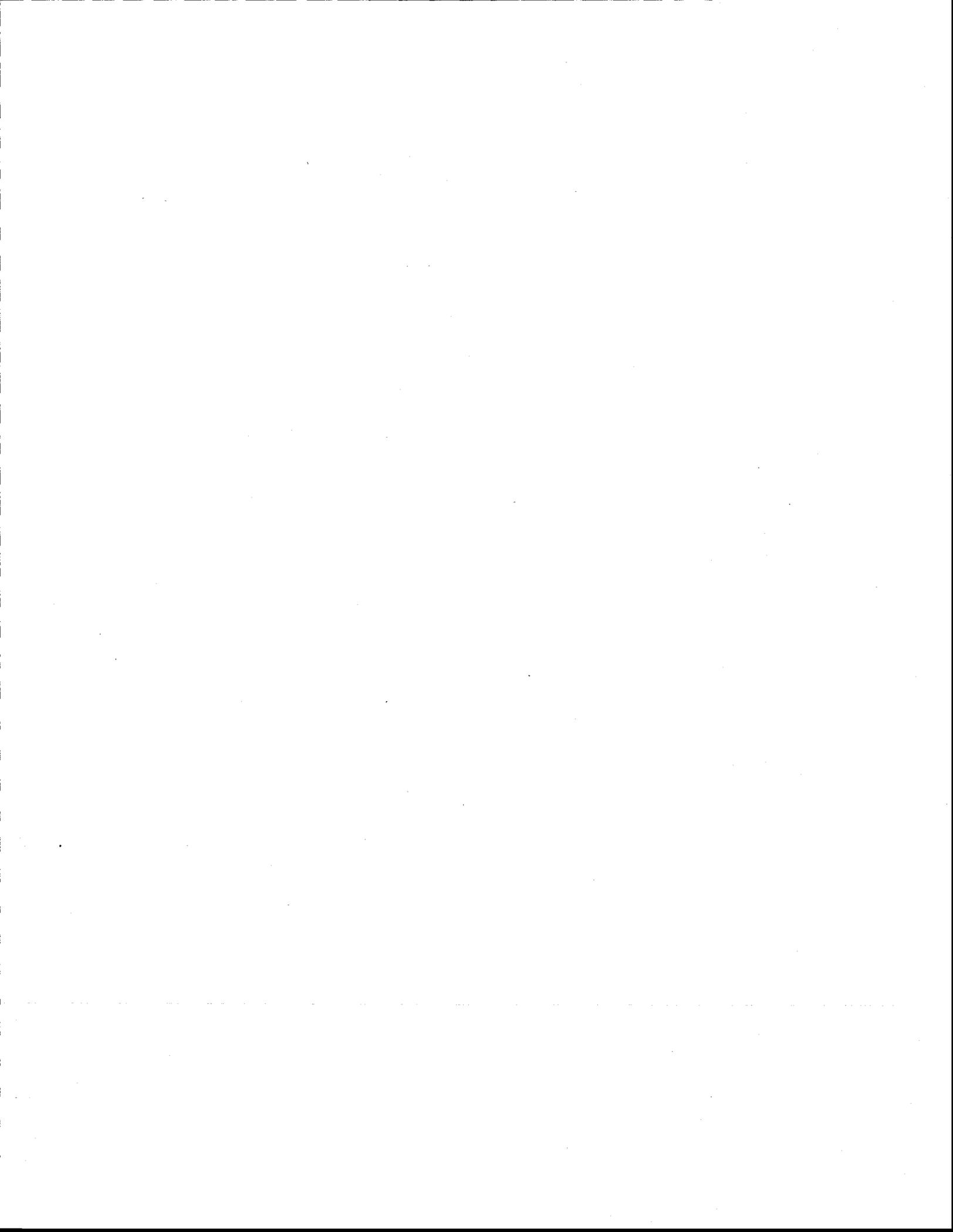
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828/327-6595

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Charlotte, NC 28270
704/364-2311

Clerk

Phyllis Porter
919/733-5745



**APPENDIX C
LEGISLATIVE PROPOSAL I**

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CHARTERING OF INDEPENDENT TRUST COMPANIES AND TO PERMIT BANKS AND TRUST COMPANIES TO CONDUCT A TRUST BUSINESS ON AN INTERSTATE BASIS.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes of North Carolina are amended by adding a new Article 23 of Chapter 53 to read as follows:

"ARTICLE 23

"Trust Companies and Interstate Trust

"PART 1. Definitions

"§ 53-290. Definitions.

(a) Unless otherwise provided, the following terms shall apply throughout this Article:

(1) "Account" means the client relationship established with a trust company involving the transfer of funds or property to the trust company, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, bailee, receiver, registrar, or agent, but excluding a relationship in which the trust company acts solely in an advisory capacity.

(2) "Act as a fiduciary" or "acting as a fiduciary" means to:
a. Accept or execute trusts, including to (i) act as trustee under a written agreement; (ii) receive money or other property in its capacity as trustee for investment in real or personal property; (iii) act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction; (iv) act as trustee of the estate of a deceased person; or (v) act as trustee for a minor or incapacitated person;

b. Administer in any other fiduciary capacity real or tangible personal property; or

c. Act pursuant to order of a court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person.

(3) "Administer" with respect to real or tangible personal property means, as an agent or in another representative capacity, to possess, purchase, sell, lease or insure, safekeep, or otherwise manage the property.

(4) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with a trust institution or other company.

(5) "Bank" has the meaning set forth in 12 U.S.C. § 1813(h); provided that the term "bank" shall not include any "foreign bank" as defined in 12 U.S.C. § 3101(7), except for any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(6) "Bank supervisory agency" means:

a. Any agency of another state with primary responsibility for chartering and supervising a trust institution; and

b. The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision and any successor to these agencies.

(7) "Branch" with respect to a depository institution has the meaning set forth in G.S. § 53-1(1a).

(8) "Capital" means the sum of the par value of all issued and outstanding shares of a State trust company.

(9) "Charter" means a charter, license, or other authority issued by the Commissioner or a bank supervisory agency authorizing a trust institution to act as a fiduciary in its home state.

(10) "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution or as an advisor or agent, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes the noncontingent beneficiaries of an account.

(11) "Commission" means the North Carolina State Banking Commission.

(12) "Commissioner" means the Commissioner of Banks for the State of North Carolina.

(13) "Company" includes a bank, trust company, corporation, partnership, association, business trust, or another trust.

(14) "Conservator" means the Commissioner or an agent of the Commissioner exercising the powers and duties hereinafter provided.

(15) "Control" means:

a. The ownership of or ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than twenty-five percent (25%) of the outstanding shares of a class of voting securities of a State trust company or other company;

b. The ability to control the election of a majority of the board of a State trust company or other company;

c. The power to exercise, directly or indirectly, a controlling influence over the management or policies of the State trust company or other company as determined by the Commissioner after notice and an opportunity for hearing; or

d. The conditioning of the transfer of more than twenty-five percent (25%) of the outstanding shares of a class of voting securities of a State trust company or other company on the transfer of more than twenty-five percent (25%) of the outstanding shares of a class of voting securities of another State trust company or other company.

(16) "Depository institution" means any company chartered to act as a fiduciary and included for any purpose within any of the definitions of "insured depository institution" as set forth in 12 U.S.C. § 1813(c)(2) and (3).

(17) "Equity capital" means the amount by which the total assets of a State trust company exceed the total liabilities of the State trust company.

(18) "Equity security" means:

a. Stock, other than adjustable rate preferred stock and money market (auction rate) preferred stock;

b. A certificate of interest or participation in a profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate;

c. A security immediately convertible at the option of the holder without payment of significant additional consideration into a security described by this subdivision;

d. A security carrying a warrant or right to subscribe to or purchase a security described by this subdivision; and

e. A certificate of interest or participation in, temporary or interim certificate for, or receipt for a security described by this subdivision that evidences an existing or contingent equity ownership interest.

(19) "Fiduciary record" means a matter written, transcribed, recorded, received, or otherwise in the possession or control of a trust company, whether in physical or electromagnetic form, that is necessary to preserve information concerning an act or event relevant to an account or a client of a trust company.

(20) "Foreign bank" means a foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978, chartered to act as a fiduciary in a state other than this State.

(21) "Hazardous condition" with respect to a trust company means:

a. A refusal by the trust company to permit examination of its books, papers, accounts, records, or affairs by the Commissioner;

b. Violation by a trust company of a condition of its chartering or an agreement entered into between the trust company and the Commissioner; or

c. A circumstance or condition in which an unreasonable risk of loss is threatened to clients or creditors of a trust company, excluding risk of loss to a client that arises as a result of the client's decisions or actions, but including a circumstance or condition in which a trust company:

1. Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even though the book or fair market value of its assets may exceed its liabilities;

2. Has equity capital less than the amount of restricted capital the trust company is required to maintain under G.S. § 53-329, or the adequacy of its equity capital is threatened, as determined under regulatory accounting principles;

3. Has concentrated an excessive or unreasonable portion of its assets in a particular type or character of investment;

4. Violates or refuses to comply with this Article, another statute or regulation applicable to trust companies, or any final and enforceable order of the Commissioner;

5. Is in a condition that renders the continuation of a particular business practice hazardous to its clients and creditors; or

6. Conducts business in an unsafe or unsound manner, which includes, but is not limited to, conducting business with:

I. Inexperienced or inattentive management;

II. Potentially dangerous operating practices;

III. Infrequent or inadequate audits;

IV. Administration of assets that is notably deficient in relation to the volume and character or responsibility for asset holdings;

V. Failure to adhere to sound administrative practices;

VI. Frequent occurrences of violations of laws, regulations, or terms of the governing instruments; or

VII. Engaging in self-dealing or evidencing potential or actual conflicts of interest.

(22) “Home state” means (i) with respect to a federally chartered trust institution and a foreign bank, the state in which the institution maintains its principal office and (ii) with respect to any other trust institution, the state which chartered the institution.

(23) “Home state regulator” means the bank supervisory agency with primary responsibility for chartering and supervising an out-of-state trust institution.

(24) “Host state” means a state, other than the home state of a trust institution, or a foreign country in which the trust institution maintains or seeks to acquire or establish an office.

(25) “Insider” means:

a. Each director, officer, and principal shareholder of the trust company;

b. Any company controlled by a director, officer, or principal shareholder of the trust company; or

c. Any person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the State trust company, whether or not the person has an official title or the officer is serving without salary or compensation.

(26) “Insolvent” means a circumstance or condition in which a State trust company:

a. Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities;

b. Has capital less than five hundred thousand dollars (\$500,000), as determined under regulatory accounting principles;

c. Sells or attempts to sell substantially all of its assets or merges or attempts to merge substantially all of its assets or business with another entity other than as hereinafter provided by this Article; or

d. Attempts to dissolve or liquidate other than as hereinafter provided by this Article.

(27) "Investment security" means a marketable obligation evidencing indebtedness of a person in the form of a bond, note, debenture, or other debt instrument not otherwise classified as a loan or extension of credit.

(28) "License" means the authority granted by the Commissioner pursuant to this Article to establish, acquire, or maintain a trust office.

(29) "Loans and extensions of credit" means direct or indirect advances of funds by a State trust company to a person that are conditioned on the obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person.

(30) "New trust office" means a trust office located in a host state that (i) is originally established by the trust institution as a trust office and (ii) does not become a trust office of the trust institution as a result of (A) the acquisition of another trust institution or trust office of another trust institution or (B) a merger, consolidation, or conversion involving any trust institution or trust office.

(31) "Office" with respect to a trust institution means the principal office, a trust office, or a representative trust office, but not a branch.

(32) "Officer" means the presiding officer of the board, the principal executive officer, or another officer appointed by the board of a State trust company or other company, or a person or group of persons acting in a comparable capacity for the State trust company or other company.

(33) "Operating subsidiary" means a company for which a State trust company has the ownership, ability, or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than fifty percent (50%) of the outstanding shares of each class of voting securities or its equivalent of the company.

(34) "Out-of-state bank" means a bank chartered to act as a fiduciary in any state or states other than this State.

(35) "Out-of-state trust company" means either a trust company that is not a State trust company or a savings institution whose principal office is not located in this State.

(36) "Out-of-state trust institution" means a trust institution that is not a State trust institution.

(37) "Person" means an individual, a company, or any other legal entity.

(38) "Principal office" with respect to:

a. A State trust company, means a location registered with the Commissioner as the State trust company's home office at which:

1. The State trust company does business;
2. The State trust company keeps its corporate books and a set of its material records, including material fiduciary records; and

3. At least one executive officer of the State trust company maintains an office; or

b. A trust institution other than a State trust company, means its principal place of business in the United States.

(39) "Principal shareholder" means a person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, ten percent (10%) or more of the outstanding shares of any class of voting securities of a State trust company or other company.

(40) "Private trust company" means a State trust company that is organized to engage in business for one or more family members and does not transact business with the general public as defined in G.S. 53-373.

(41) "Registration" means the process by which a trust institution has been authorized by the Commissioner to acquire, establish, or maintain a representative trust office in this State.

(42) "Representative trust office" means an office at which a trust institution has been authorized by the Commissioner to engage in a trust business other than acting as a fiduciary.

(43) "Savings institution" means a depository institution that is neither a bank nor a foreign bank.

(44) "Shareholder" means an owner of a share in a State trust company.

(45) "Shares" means the units into which the proprietary interests of a State trust company are divided or subdivided by means of classes, series, relative rights, or preferences.

(46) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(47) "State bank" means (i) a bank chartered to act as a fiduciary by this State or (ii) a foreign bank as defined in section 1(b)(7) of the International Banking Act of 1978 chartered to act as a fiduciary in this State.

(48) "State trust company" means a corporation organized or reorganized under this Article, including a trust company previously organized under other provisions of Chapter 53 of the North Carolina General Statutes.

(49) "State trust institution" means a trust institution having its principal office in this State.

(50) "Subsidiary" means a company that is controlled by another person. The term includes a subsidiary of a subsidiary.

(51) "Surplus" means the amount by which the assets of a State trust company exceeds its liabilities, capital, and undivided profits.

(52) "Trust business" means the holding out by a person to the public by advertising, solicitation, or other means that the person is available to perform any service of a fiduciary in this or another state, including:

a. Acting as a fiduciary, or

b. To the extent not acting as a fiduciary, any of the

following:

(i) receiving for safekeeping personal property of every description;

(ii) acting as assignee, bailee, conservator, custodian, escrow agent, registrar, receiver, or transfer agent; or

(iii) acting as financial advisor, investment advisor or manager, agent or attorney-in-fact in any agreed upon capacity.

(53) "Trust company" means a State trust company or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank.

(54) "Trust deposits" means the client funds held by a State trust company and authorized to be deposited with itself pending investment, distribution, or payment of debts on behalf of the client, depository institution, foreign bank, State bank, or trust company.

(55) "Trust institution" means a depository trust institution, foreign bank, State bank, or trust company.

(56) "Trust office" means an office, other than the principal office, at which a trust institution is licensed by the Commissioner to act as a fiduciary.

(57) "Unauthorized trust activity" means (i) a company, other than one identified in G.S. § 53-293(a)(1)-(8), acting as a fiduciary within this State, (ii) a company engaging in a trust business in this State at any office of the company that is not its principal office, if it is a State trust institution, or that is not a trust office or a representative trust office of the company, or (iii) an out-of-state trust institution engaging in a trust business in this State at any time an order issued by the Commissioner pursuant to G.S. § 53-312(b) is in effect.

(58) "Undivided profits" means the part of equity capital of a State trust company equal to the balance of its net profits, income, gains, and losses since the date of its formation, minus subsequent distributions to shareholders and transfers to surplus or capital under share dividends or appropriate board resolutions. The term includes amounts allocated to undivided profits as a result of a merger.

(59) "Voting security" means a share or other evidence of proprietary interest in a State trust company or other company that has as an attribute the right to vote or participate in the election of the board of the State trust company or other company, regardless of whether the right is limited to the election of fewer than all of the board members. The term includes a security that is convertible or exchangeable into a voting security.

(b) These definitions shall be liberally construed to accomplish the purposes of this Article. The State Banking Commission may adopt other definitions to accomplish the purposes of this Article.

PART 2. Multistate Trust Institutions Act.

Subpart A. General.

§ 53-291. Title and purposes.

(a) This Part may be cited as the Multistate Trust Institutions Act.

(b) It is the express intent of this Part to permit banks and other depository institutions, foreign banks, and trust companies to engage in the trust business on a multistate and international basis to the extent consistent with the safety and soundness of the trust institutions engaged in a trust business in this State and the protection of consumers, clients, and other customers of the trust institutions.

§ 53-292. Regulations.

The Commission may adopt rules in accordance with Chapter 150B of the General Statutes to implement the provisions of this Part.

Subpart B. Companies Authorized to Act as a Fiduciary.

§ 53-293. Companies authorized to act as a fiduciary.

- (a) No company shall act as a fiduciary in this State except:
- (1) A State trust company;
 - (2) A State bank;
 - (3) A savings institution organized under the laws of this State and authorized to act as a fiduciary pursuant to Chapter 54B or Chapter 54C of the North Carolina General Statutes;
 - (4) A national bank having its principal office in this State and authorized by the Comptroller of the Currency to act as a fiduciary pursuant to 12 U.S.C. § 92a;
 - (5) A federally chartered savings institution having its principal office in this State and authorized by its federal chartering authority to act as a fiduciary;
 - (6) An out-of-state bank with a branch in this State established or maintained pursuant to Article 17B of this Chapter of the North Carolina General Statutes or a trust office licensed by the Commissioner pursuant to this Part;
 - (7) An out-of-state trust company with a trust office licensed by the Commissioner pursuant to this Part; or
 - (8) A foreign bank with a trust office licensed by the Commissioner pursuant to this Part.
- (b) In addition to the authority granted pursuant to subsection (a) of this section, an out-of-state trust institution may act as a fiduciary in this State provided that the home state of the out-of-state trust institution permits a trust institution organized under the laws of this State, or having its principal office in this State, to act as a fiduciary in the home state of the out-of-state trust institution under no greater restrictions than are imposed by this Article.
- (c) No company shall engage in an unauthorized trust activity.

§ 53-294. Activities not requiring a charter, etc.

Notwithstanding any other provision of this Article, a company does not engage in the trust business or in any other business in a manner requiring a charter, license, or registration under this Article or in an unauthorized trust activity by:

- (1) Acting in a manner authorized by law and in the scope of authority as an agent of a trust institution with respect to an activity that is not an unauthorized trust activity;
- (2) Rendering a service customarily performed as an attorney or law firm in a manner approved and authorized by the North Carolina State Bar;
- (3) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;
- (4) Receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the North Carolina Real Estate Commission;

(5) Engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor, or registered representative thereof, provided the activity is regulated by the Secretary of State or the United States Securities and Exchange Commission;

(6) Engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the Department of Insurance to the extent that the activity is regulated by the Department of Insurance;

(7) Engaging in the lawful sale of prepaid funeral benefits under a license issued by the North Carolina Board of Mortuary Science pursuant to Article 13D of Chapter 90 of the General Statutes or engaging in the lawful business of a perpetual care cemetery corporation pursuant to Chapter 65 of the General Statutes;

(8) Acting as trustee under a voting trust as provided by the North Carolina Business Corporation Act;

(9) Acting as trustee by a public, private, or independent institution of higher education or a university system, including its affiliated foundations or corporations, with respect to endowment funds or other funds owned, controlled, provided to, or otherwise made available to the institution with respect to its educational or research purposes;

(10) Engaging in other activities expressly excluded from the application of this Article by rule of the Commission;

(11) Rendering services customarily performed by a certified public accountant in a manner authorized by the North Carolina State Board of Certified Public Accountant Examiners; or

(12) Provided the company is a trust institution and is not barred by order of the Commissioner from engaging in a trust business in this State pursuant to G.S. § 53-312(b), (i) marketing or soliciting in this State through the mail, telephone, any electronic means, or in person with respect to acting or proposing to act as fiduciary outside of this State; (ii) delivering money or other intangible assets and receiving money or other intangible assets from a client or other person in this State; or (iii) accepting or executing outside of this State a trust of any client or otherwise acting as a fiduciary outside of this State for any client.

§ 53-295. Trust business of State trust institution.

(a) A State trust institution may act as a fiduciary or otherwise engage in a trust business in this or any other state or foreign country, subject to complying with applicable laws of such state or foreign country, at an office established and maintained pursuant to this Part, at a branch or at any location other than an office or branch.

(b) In addition, a State trust institution may conduct any activities at any office outside this State that are permissible for a trust institution chartered by the host state where the office is located, except to the extent the activities are expressly prohibited by the laws of this State or by any regulation or order of the Commissioner applicable to the State trust institution; provided, however, that the Commissioner may waive any prohibition if the Commissioner determines, by order or regulation, that the involvement of out-of-state offices of State trust institutions in particular activities would not threaten the safety or soundness of the institutions.

§ 53-296. Trust business of out-of-state trust institution.

An out-of-state trust institution that establishes or maintains one or more offices in this State under this Part may conduct any activity that a State trust company is authorized to conduct under the laws of this State.

§ 53-297. Name of trust institution.

A State trust company or out-of-state trust institution may register or reserve any name with the Secretary of State in connection with establishing a principal office, trust office, or representative trust office in this State pursuant to this Article, except that the Commissioner may determine that a name proposed to be registered is potentially misleading to the public and require the registrant to select a name that is not potentially misleading.

Subpart C. State Trust Institution Offices.

§ 53-298. Trust business.

A State trust company or a State bank may:

- (1) Perform any act as a fiduciary;
- (2) Engage in any trust business;
- (3) Exercise any incidental power that is reasonably necessary to enable it to fully exercise, according to commonly accepted fiduciary customs and usages, a power conferred in this Article; and
- (4) If a State trust company, exercise any other power authorized by G.S. § 53-323.

§ 53-299. Branches and offices of State trust institutions.

- (a) A State trust institution may act as a fiduciary and engage in a trust business at a branch and at each trust office as permitted by this Part.
- (b) A State trust institution may not act as a fiduciary but may otherwise engage in a trust business at a representative trust office as permitted by this Part.
- (c) A State bank or State trust company may engage in a trust business in an out-of-state office to the same extent permitted for trust institutions located in the host state in which the out-of-state office is located except where the activity is prohibited by the laws of this State or any regulation or order issued by the Commissioner.

§ 53-300. State trust company principal office.

- (a) Each State trust company is required to have and maintain continuously a principal office in this State.
- (b) Each executive officer at the principal office is an agent of the State trust company for service of process.
- (c) A State trust company may change its principal office to any location within this State by filing a written notice with the Commissioner setting forth the name

of the State trust company, the street address of its principal office before the change, the street address to which the principal office is to be changed, and a copy of the resolution adopted by the board authorizing the change.

(d) The change of principal office shall take effect on the thirty-first day following the date the Commissioner receives the notice pursuant to subsection (c) of this section, unless (i) the Commissioner establishes an earlier or later date, or (ii) prior to the thirty-first day, the Commissioner notifies the State trust company that it must establish to the satisfaction of the Commissioner that the relocation is consistent with the original determination made under G.S. § 53-325(b) for the establishment of a State trust company at that location, in which event the change of principal office shall take effect when approved by the Commissioner.

§ 53-301. Trust office; representative trust office.

(a) A State trust institution may establish or acquire and maintain trust offices or representative trust offices anywhere in this State. A State trust institution desiring to establish or acquire and maintain an office shall file a written notice with the Commissioner setting forth the name of the State trust institution, the location of the proposed additional office and whether the additional office will be a trust office or a representative trust office, shall furnish a copy of the resolution adopted by the board authorizing the additional office and shall pay the filing fee, if any, set by rule.

(b) The trust institution may commence business at the additional office on the thirty-first day after the date the Commissioner receives the notice, unless the Commissioner specifies an earlier or later date.

(c) The 30-day period of review may be extended by the Commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the State trust institution may establish the additional office only on prior written approval by the Commissioner.

(d) The Commissioner may deny approval of the additional office if the Commissioner finds that the trust institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest.

§ 53-302. Out-of-state offices.

(a) A State bank, a State trust company, or a savings institution chartered under the laws of this State may establish and maintain a new trust office or a representative trust office or acquire and maintain an office in a state other than this State. The trust institution desiring to establish or acquire and maintain an office in another state under this section shall file a notice on a form adopted by the Commissioner that sets forth the name of the trust institution, the location of the proposed office, whether the office will be a trust office or a representative trust office, and whether the laws of the jurisdiction where the office will be located permit the office to be maintained by the trust institution, shall furnish a copy of the resolution adopted by the board authorizing the out-of-state office, and shall pay the filing fee, if any, set by rule.

(b) The State bank, State trust institution, or savings institution may commence business at the additional office on the thirty-first day following the date the

Commissioner receives the notice, unless the Commissioner specifies an earlier or later date.

(c) The 30-day period of review may be extended by the Commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the trust institution may establish the additional office only on prior written approval by the Commissioner.

(d) The Commissioner may deny approval of the additional office if the Commissioner finds that the trust institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest. In acting on the notice, the Commissioner shall consider the views of the appropriate bank supervisory agency.

Subpart D. Out-of-State Trust Institution Trust Office.

§ 53-303. Trust business at a branch or trust office.

Except as provided by G.S. 53-293(b), an out-of-state trust institution may act as a fiduciary in this State or engage in a trust business at an office in this State only if it maintains (i) a trust office in this State as permitted by this Part or (ii) a branch in this State.

§ 53-304. Establishing an interstate trust office.

An out-of-state trust institution that does not operate a trust office in this State and that meets the requirements of this Part may establish and maintain a new trust office in this State; provided that an out-of-state trust institution may not establish a new trust office in this State unless a similar institution chartered under the laws of this State to act as a fiduciary, is permitted to establish a new trust office that may engage in activities substantially similar to those permitted to trust offices of out-of-state trust institutions under G.S. § 53-303, in the state where the out-of-state trust institution has its principal office.

§ 53-305. Acquiring an interstate trust office.

An out-of-state trust institution that does not operate a trust office in this State and that meets the requirements of this Part may acquire and maintain a trust office in this State; provided that no out-of-state trust institution may maintain a trust office in this State unless a similar institution chartered under the laws of this State to act as a fiduciary is permitted to acquire and maintain a trust office through an acquisition of a trust office in the state where the out-of-state trust institution has its principal office and may engage in activities substantially similar to those permitted to trust offices of out-of-state trust institutions under G.S. § 53-303, in the state where the out-of-state trust institution has its principal office.

§ 53-306. Requirement of notice.

An out-of-state trust institution desiring to establish and maintain a new trust office or acquire and maintain a trust office in this State pursuant to this Subpart, shall provide, or cause its home state regulator to provide, written notice of the proposed transaction to the Commissioner on or after the date on which the out-of-state trust institution applies to the home state regulator for approval to establish and maintain or acquire the trust office. The filing of the notice shall be preceded or accompanied by a copy of the resolution adopted by the board authorizing the additional office and any fee set by rule.

§ 53-307. Conditions for approval.

(a) No trust office of an out-of-state trust institution may be acquired or established in this State under this Subpart unless:

(1) The out-of-state trust institution has confirmed in writing to the Commissioner that for as long as it maintains a trust office in this State it will comply with all applicable laws of this State;

(2) The institution has provided satisfactory evidence to the Commissioner of compliance with (i) any applicable requirements of Article 15 of Chapter 55 of the General Statutes; and (ii) the applicable requirements of its home state regulator for acquiring or establishing and maintaining the office; and

(3) The Commissioner, acting within 60 days after receiving notice under G.S. § 53-306, has certified to the home state regulator that the requirements of this Subpart have been met and the notice has been approved or, if applicable, that any conditions imposed by the Commissioner pursuant to subsection (b) of this section have been satisfied.

(b) The out-of-state trust institution may commence business at the trust office on the sixty-first day following the date the Commissioner receives the notice, unless the Commissioner specifies an earlier or later date. With respect to an out-of-state trust institution that is not a depository institution and for which the Commissioner has conditioned approval on the satisfaction by the institution of any requirement applicable to a State trust company pursuant to G.S. §§ 53-325(b) or G.S. 53-329, the institution shall comply and provide evidence to the Commissioner of compliance before the institution may commence business.

(c) The 60-day period of review may be extended by the Commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the office only on prior written approval by the Commissioner.

(d) The Commissioner may deny approval of the office if the Commissioner finds that the institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office is contrary to the public interest. In acting on the notice, the Commissioner shall consider the views of the appropriate bank supervisory agency.

§ 53-308. Additional trust offices.

An out-of-state trust institution that maintains a trust office in this State under this Part may establish or acquire additional trust offices or representative trust offices in this

State to the same extent that a State trust institution may establish or acquire additional offices in this State pursuant to the procedures for establishing or acquiring offices set forth in G.S. § 53-301.

§ 53-309. Representative trust office business.

(a) An out-of-state trust institution may not act as a fiduciary, but may otherwise engage in a trust business, at a representative trust office as permitted by this Subpart.

(b) Subject to the requirements contained in this Subpart, an out-of-state trust institution may establish and maintain representative trust offices anywhere in this State.

§ 53-310. Registration of representative trust office.

(a) An out-of-state trust institution may establish or acquire and maintain a representative trust office in this State. An out-of-state trust institution not maintaining a trust office in this State and desiring to establish or acquire and maintain a representative trust office shall file a notice on a form adopted by the Commissioner. The notice shall set forth the name of the out-of-state trust institution, the location of the proposed office shall include satisfactory evidence that the entity is a trust institution and shall include a copy of the resolution adopted by the board authorizing the representative trust office. The out-of-state trust institution shall pay the filing fee, if any, set by rule.

(b) The out-of-state trust institution may commence business at the representative trust office on the thirty-first day following the date the Commissioner receives the notice, unless the Commissioner specifies an earlier or later date.

(c) The 30-day period of review may be extended by the Commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the representative trust office only on prior written approval by the Commissioner.

(d) The Commissioner may deny approval of the representative trust office if the Commissioner finds that the out-of-state trust institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest. In acting on the notice, the Commissioner shall consider the views of the appropriate bank supervisory agency.

§ 53-311. Examinations; periodic reports; cooperative agreements; assessment of fees.

(a) To the extent consistent with subsection (c) of this section, the Commissioner may examine any office established and maintained in this State pursuant to this Part by an out-of-state trust institution to determine whether the office is being operated in compliance with the laws of this State and in accordance with safe and sound practices. The pertinent provisions of G.S. § 53-117 and G.S. § 53-118 apply to these examinations.

(b) The Commissioner may require periodic reports regarding any out-of-state trust institution that has established and maintained an office in this State pursuant to this Part. The required reports shall be provided by the trust institution or by the home state regulator. Any reporting requirements shall be (i) consistent with the reporting requirements applicable to State trust companies and (ii) appropriate for the purpose of enabling the Commissioner to carry out the Commissioner's responsibilities under this Article.

(c) The Commissioner may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any office in this State of an out-of-state trust institution, or any office of a State trust institution in any host state, and the Commissioner may accept a party's report of examination and report of investigation in lieu of conducting a separate examination or investigation.

(d) The Commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a State trust institution or an out-of-state trust institution maintaining an office in this State to engage the services of the agency's examiners at a reasonable rate of compensation or to provide the services of the Commissioner's examiners to the agency at a reasonable rate of compensation. Article 3 of Chapter 143 of the General Statutes does not apply to contracts authorized by this subsection.

(e) The Commissioner may enter into joint examination or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any office established and maintained in this State by an out-of-state trust institution or any office established and maintained by a State trust institution in any host state; provided, that the Commissioner may at any time take actions independently if the Commissioner considers the actions to be necessary or appropriate to carry out the Commissioner's responsibilities under this Article or to ensure compliance with the laws of this State. In the case of an out-of-state trust institution, the Commissioner shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out-of-state trust institution that maintains one or more offices in this State may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with rules adopted by the State Banking Commission. The fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between the parties and the Commissioner.

§ 53-312. Enforcement.

(a) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine:

(1) That an office maintained by an out-of-state trust institution in this State is being operated in violation of any provision of the laws of this State or in an unsafe and unsound manner; or

(2) That a company is engaged in an unauthorized trust activity.

In either event, the Commissioner may take any enforcement actions the Commissioner would be authorized to take if the office or the company were a State trust company, including issuing an order temporarily or permanently prohibiting the company from engaging in a trust business in this State.

(b) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine by order that an out-of-state trust institution engaging in or proposing to engage in a trust business in this State does not meet the requirements for establishing a representative trust office in this State pursuant to G.S. §53-310. The order shall be effective on the date of issuance or any other date the Commissioner determines.

(c) In cases involving extraordinary circumstances requiring immediate action, the Commissioner may take any action permitted by subsections (a) or (b) of this section, without notice or opportunity for hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken. The Commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state trust institution and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action.

§ 53-313. Notice of subsequent merger, closing, etc.

Each out-of-state trust institution that maintains an office in this State pursuant to this Part, or the home state regulator of the trust institution, shall give at least 30 days' prior written notice (or, in the case of an emergency transaction, such shorter notice as is consistent with applicable State or federal law) to the Commissioner of (i) any merger, consolidation, or other transaction that would cause a change of control with respect to an out-of-state trust institution or any bank holding company that controls the trust institution, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, 12 U.S.C. § 1817(j), or the Federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or any successor statutes thereto; (ii) any transfer of all or substantially all of the trust accounts or trust assets of the out-of-state trust institution to another person; or (iii) the closing or disposition of any office in this State.

PART 3. State Trust Institution Charter Modernization Act.

Subpart A. Trust and Fiduciaries.

§ 53-314. Title and purposes.

(a) This Part may be cited as the State Trust Institution Charter Modernization Act.

(b) The express purposes of this Part are to:

(1) Provide for the chartering of trust companies and to permit trust companies to act as fiduciaries and otherwise engage in the trust business in this State, provided they are adequately capitalized, competently managed by persons of integrity, and supervised by the Commissioner of Banks, all in order to ensure that the trust

companies are operated in compliance with law, in a safe and sound manner and in a manner that protects their clients and customers and other consumers in this State; and

(2) Improve service and reduce costs for trust institution clients and customers and other consumers in this State by modernizing State laws to permit the delegation by trust institutions of fiduciary functions but not fiduciary responsibility, to authorize clients to designate any trust institution to act for them and to choose an appropriate state's law to govern fiduciary instruments and investments, and to protect consumers from excessive fees or undisclosed conflicts of interest of trust institutions and their affiliates.

§ 53-315. Designation of trustee.

Any person residing in this State may designate any trust institution to act as a fiduciary on behalf of the person.

§ 53-316. Choice of law governing trusts.

Any trust institution that maintains a trust office or representative trust office in this State and its affected clients may designate either (i) this State, (ii) a state where affected clients reside, or (iii) the state where the trust institution has its principal office, as the state whose laws shall govern any written agreement between the trust institution and its client or any instrument under which the trust institution acts for a client.

§ 53-317. Choice of law governing fiduciary investments.

Any trust institution that maintains a trust office or representative trust office in this State and its affected clients may designate either (i) this State, (ii) a state where affected clients reside, or (iii) the state where the trust institution has its principal office, as the state whose laws shall govern with respect to the fiduciary investment standards applicable to any written agreement between the trust institution or its client and any other instrument under which the trust institution acts for a client.

§ 53-318. Delegation and fiduciary responsibility.

(a) Any person acting as a trustee or as any other fiduciary under the laws of this State may delegate any investment, management, or administrative function if the person exercises reasonable care, judgment, and caution in:

(1) Selecting the delegate, taking into account the delegate's financial standing and reputation;

(2) Establishing the scope and other terms of any delegation; and

(3) Reviewing periodically the delegate's actions in order to monitor overall performance and compliance with the scope and other terms of the delegation.

(b) Notwithstanding any delegation permitted by subsection (a) of this section, any person acting as a trustee or in any other fiduciary capacity under the laws of this State shall retain responsibility for the due performance of any delegated fiduciary function.

§ 53-319. Affiliates.

(a) Any person acting as a trustee or in any other fiduciary capacity may hire and compensate, as a delegate, an affiliate of the person if:

- (1) Authorized by a trust or fiduciary instrument;
- (2) Authorized by court order;
- (3) Authorized in writing by each affected client; or
- (4) The standards of G.S. § 53-318 are satisfied.

(b) Fees paid to an affiliate shall be competitive with fees charged by nonaffiliates that provide substantially similar services.

§ 53-320. Fee determination.

Unless set by a court of competent jurisdiction, the compensation arrangement between a client and any person acting as a trustee or as any other fiduciary pursuant to this Article shall be in writing, as agreed to between the parties and shall be fully disclosed to the client.

§ 53-321. Disclosure of potential conflicts of interest.

(a) Any company, proposing to act as a trustee or in any other fiduciary capacity pursuant to a written agreement to be entered into with a prospective client that has any potential or actual conflict of interest that may reasonably be expected to have an impact on the independence or judgment of the trustee or fiduciary, shall deliver a disclosure statement to the prospective client (i) not less than 48 hours prior to entering into any written or oral trust or fiduciary agreement with the client or prospective client, or (ii) at the time of entering into any agreement if the client has a right to terminate the agreement without penalty within three or more business days after entering into the agreement.

(b) The disclosure statement shall contain appropriate information concerning the actual or potential conflict of interest. If the trustee or other fiduciary proposes to delegate any fiduciary function to an affiliate, the nature of the affiliation and whether the trustee or other fiduciary may directly benefit from the delegation shall be disclosed in the disclosure statement.

§ 53-322. Purchase of assets of another trust institution.

(a) Subject to the provisions of this section, a trust institution may purchase assets of a State trust company or trust-related assets of another trust institution, including the right to control accounts established with the trust institution. Except as otherwise expressly provided by this or another statute, the purchase of all or part of the assets of the trust institution does not make the purchasing trust institution responsible for any liability or obligation of the selling trust institution that the purchasing trust institution does not expressly assume. Except as otherwise provided by this Subpart, this Subpart does not govern or prohibit the purchase by a State trust institution of all or part of the assets of a corporation or other entity that is not a trust institution.

(b) If the acquiring institution is a State bank, a State trust company, an out-of-state trust institution or a savings institution chartered under the laws of this State and maintains neither a branch nor a trust office in this State, an application in the form required by the Commissioner shall be filed with the Commissioner for any acquisition of all or substantially all of (i) the assets of a State trust company, or (ii) the trust assets of another trust institution. The Commissioner shall investigate the condition of the purchaser and seller and may require the submission of additional information as considered necessary to make an informed decision. The Commissioner shall approve the purchase if:

(1) The acquiring trust institution will be solvent and have sufficient capitalization for its business and location;

(2) The acquiring trust institution has complied with all applicable statutes and rules including, without limitation, any applicable requirements of this Article;

(3) All fiduciary obligations and liabilities of the parties have been properly discharged or otherwise assumed by the acquiring trust institution;

(4) All conditions imposed by the Commissioner have been satisfied or otherwise resolved; and

(5) All fees and costs have been paid.

(c) A purchase requiring an application pursuant to subsection (b) of this section is effective on the date of approval, unless the purchase agreement provides for, and the Commissioner consents to, a different effective date.

(d) The acquiring trust institution shall succeed by operation of law to all of the rights, privileges, and obligations of the selling trust institution under each account included in the assets acquired.

(e) The application required by subsection (b) shall be accompanied by fee set by the State Banking Commission by rule.

Subpart B. State Trust Company.

§ 53-323. Organization and powers of State trust company.

(a) Subject to the other provisions of this Part, one or more persons may organize and charter a State trust company. A State trust company may perform any act as a fiduciary or engage in any trust business within or without this State.

(b) Subject to G.S. 53-330, a State trust company may exercise the powers of a business corporation organized under North Carolina law reasonably necessary or helpful to enable exercise of its specific powers under this Part.

(c) A State trust company may contribute to community funds, or to charitable, philanthropic, or benevolent instrumentalities conducive to public welfare, any amounts that its board considers appropriate and in the interests of the State trust company.

(d) Subject to G.S. 53-344, a State trust company may deposit trust funds with itself or an affiliate.

§ 53-324. Articles of incorporation of State trust company.

The articles of incorporation of a State trust company shall be signed and acknowledged by each organizer and shall contain:

- (1) The name of the State trust company;
- (2) The period of its duration, which may be perpetual;
- (3) The powers of the State trust company, which may be stated as:
 - a. All powers granted to a State trust company in this State; or
 - b. A list of the specific powers that the State trust company chooses and is authorized to exercise;
- (4) The aggregate number of shares that the State trust company will be authorized to issue, the number of classes of shares, which may be one or more, the number of shares of each class if more than one class, and a statement of the par value of the shares of each class.
- (5) If the shares are to be divided into classes, the designation of each class and statement of the preferences, limitations, and relative rights of the shares of each class;
- (6) Any provision limiting or denying to shareholders the preemptive right to acquire additional or treasury shares of the State trust company;
- (7) Any provision granting the right of shareholders to cumulative voting in the election of directors or managers;
- (8) The aggregate amount of consideration to be received for all shares initially issued by the State trust company, and a statement that all authorized shares have been subscribed and that all subscriptions received provide for the consideration to be fully paid in cash before issuance of the charter;
- (9) Any provision consistent with law that the organizers elect to set forth in the articles of incorporation for the regulation of the internal affairs of the State trust company or that is otherwise required by this Part to be set forth in the articles of incorporation;
- (10) The street address of the State trust company's principal office required to be maintained under G.S. § 53-300; and
- (11) The number of directors constituting the initial board, which may not be fewer than five or more than 25, and the names and street addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until successor directors have been elected and qualified.

§ 53-325. Application for State trust company charter.

(a) An application for a State trust company charter shall be made under oath and in the form required by the Commissioner and shall be supported by information, data, records, and opinions of counsel that the Commissioner requires. The application shall be accompanied by the fee set by the State Banking Commission by rule.

(b) The Commissioner shall grant a State trust company charter only on proof that one or more viable markets exist within or outside of this State that may be served in a profitable manner by the establishment of the proposed State trust company. In making such a determination, the Commissioner shall examine the business plan, which shall be submitted as part of the application for a State trust company charter, and shall consider:

- (1) The market or markets to be served;

- (2) Whether the proposed organizational and capital structure and amount of initial capitalization is adequate for the proposed business and location;
- (3) Whether the anticipated volume and nature of business indicates a reasonable probability of success and profitability based on the market sought to be served;
- (4) Whether the proposed officers and directors, as a group, have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed State trust company will operate in compliance with law and that success of the proposed State trust company is probable;
- (5) Whether each principal shareholder has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed State trust company will be free from improper or unlawful influence or interference with respect to the State trust company's operation in compliance with law; and
- (6) Whether the organizers are acting in good faith.
- (c) The failure of an applicant to furnish required information, data, opinions of counsel, other material, or the required fee shall be considered an abandonment of the application.

§ 53-326. Notice and investigation of charter application; written reports.

(a) The Commissioner shall notify the organizers when the application is complete and accepted for filing and all required fees have been paid. Promptly after this notification, the organizers shall publish notice of the application and solicit comments in the form specified by the Commissioner at locations reasonably necessary to solicit the views of potentially affected persons specified by the Commissioner by rule.

(b) At the expense of the organizers, the Commissioner shall investigate the application and inquire into the identity and character of each proposed director, officer, and principal shareholder. The Commissioner shall prepare a written report of the investigation, and any person may request a copy of the nonconfidential portions of the application and written report as provided by Chapter 132 of the General Statutes. Rules adopted under this Article may specify the confidential or nonconfidential character of information obtained by the Commission under this section. Except as provided in rules regarding confidential information, the financial statement of a proposed officer or director is confidential and not subject to public disclosure.

§ 53-327. Decision on charter application and hearing.

(a) Any person may file a protest to an application. The manner and time in which the protest may be filed shall be adopted by rule.

(b) Not later than the thirtieth day following the last date the notice was published under G.S. § 53-326(b), the Commissioner shall determine whether the application meets the requirements of G.S. § 53-325, based on the application and investigation, and shall enter an order approving the application, or shall set a hearing pursuant to Article 3A of Chapter 150B of the General Statutes.

(c) Based on the record of any hearing set pursuant to subsection (b) of this section, the Commissioner shall determine whether all of the necessary conditions set forth in G.S. § 53-325 have been established and shall enter an order granting or denying the charter. The Commissioner may make approval of any application conditional and shall include any conditions in the order granting the charter.

(d) Any order entered by the Commissioner with respect to a Charter Application shall be subject to review by the State Banking Commission for entry of a final agency decision.

§ 53-328. Issuance of charter.

(a) A State trust company may not engage in the trust business until it receives its charter approved by the Commissioner. The Commissioner may not approve the charter until the State trust company has:

(1) Received cash or United States government securities having a market value on the date of capitalization in at least the full amount of required capital from subscriptions for the issuance of shares;

(2) Elected or qualified the initial officers and directors named in the application for charter or other officers and directors approved by the Commissioner; and

(3) Complied with all other requirements of this Article relative to the organization of a State trust company.

(b) If a State trust company does not open and engage in the trust business within six months after the date it receives its charter or conditional approval of application for charter, or within a further period as extended by the Commissioner, the Commissioner shall revoke the charter or cancel the conditional approval of application for charter without judicial action.

§ 53-329. Required capital.

(a) The Commissioner may not approve a charter to a State trust company having required equity capital of less than three million dollars (\$3,000,000), except as provided in subsection (b) of this section.

(b) The Commissioner may require additional equity capital for a proposed or existing State trust company if the Commissioner finds the condition and operation of the existing State trust company or the proposed scope or type of operation of a proposed State trust company requires additional equity capital consistent with the safety and soundness of the State trust company. The Commissioner may, in the exercise of discretion consistent with protecting safety and soundness, reduce the amount of minimum equity capital required for a proposed or existing State trust company, if the Commissioner finds the condition and operation of an existing State trust company or the proposed scope or type of operation of a proposed State trust company permits reduced equity capital consistent with the safety and soundness of the State trust company. The safety and soundness factors to be considered by the Commissioner in the exercise of the Commissioner's discretion include:

(1) The nature and type of business conducted;

(2) The nature and degree of liquidity in assets held in a corporate capacity;

- (3) The amount of fiduciary assets under management;
- (4) The type of fiduciary assets held and the depository of the assets;
- (5) The complexity of fiduciary duties and degree of discretion undertaken;
- (6) The competence and experience of management;
- (7) The extent and adequacy of internal controls;
- (8) The presence or absence of annual unqualified audits by an independent certified public accountant;
- (9) The reasonableness of business plans for retaining or acquiring additional capital; and
- (10) The existence and adequacy of insurance obtained or held by the trust company for the purpose of protecting its clients, beneficiaries, and grantors.

(c) The proposed effective date of an order requiring an existing State trust company to increase its equity capital shall be stated in the order as of or after the twenty-first day following the date the proposed order is mailed or delivered. Unless the State trust company requests a hearing before the Commissioner in writing before the effective date of the proposed order, the order becomes effective and is final and nonappealable. This subsection does not prohibit an application to reduce equity capital requirements of a proposed or an existing State trust company under subsection (b) of this section.

(d) Subject to subsection (b) of this section, a State trust company to which the Commissioner issues a charter shall at all times maintain capital in at least the amount required under subsection (a) of this section, plus any additional amount or less any reduction the Commissioner directs under subsection (b) of this section.

§ 53-330. Application of laws relating to general business corporations.

(a) The North Carolina Business Corporation Act, as codified in Chapter 55 of the General Statutes, applies to a trust company to the extent not inconsistent with this Article or the proper business of a trust company, except that, unless expressly authorized by this Article or a rule adopted by the State Banking Commission, a trust company may not take an action authorized by the North Carolina Business Corporation Act regarding its corporate status, capital structure, or a matter of corporate governance, of the type for which the North Carolina Business Corporation Act would require a filing with the Secretary of State, without first obtaining the approval of the Commissioner.

(b) The State Banking Commission may adopt rules to limit or refine the applicability of subsection (a) of this section to a trust company or to alter or supplement the procedures and requirements of the North Carolina Business Corporation Act applicable to an action taken under this Article.

§ 53-331. Amendment of State trust company articles of incorporation.

(a) A State trust company that has been granted a charter under G.S. § 53-328 or a predecessor statute may amend or restate its articles of incorporation for any lawful purpose, including the creation of authorized but unissued shares in one or more classes or series.

(b) An amendment authorizing the issuance of shares in series shall contain:

(1) The designation of each series and any variations in the preferences, limitations, and relative rights among series to the extent that the preferences, limitations, and relative rights are to be established in the articles of incorporation; and

(2) A statement of any authority to be vested in the board to establish series and determine the preferences, limitations, and relative rights of each series.

(c) Amendment or restatement of the articles of incorporation of a State trust company and approval of the board and shareholders shall be made or obtained in accordance with provisions of the North Carolina Business Corporation Act for the amendment or restatement of articles of incorporation except as otherwise provided by this Article or rules adopted by the State Banking Commission. Unless the submission presents novel or unusual questions, the Commissioner shall approve or reject the amendment or restatement not later than 10 days after the date the Commissioner considers the submission informationally complete. The Commissioner may require the submission of additional information as considered necessary to an informed decision to approve or reject any amendment or restatement of articles of incorporation under this section.

§ 53-332. Establishing a series of shares.

(a) If the articles of incorporation expressly give the board authority to establish series and determine the preferences, limitations, and relative rights of each series of shares, the board may do so only in compliance with this section and any rules adopted by the State Banking Commission.

(b) A series of shares may be established in the manner provided by the provisions of the North Carolina Business Corporation Act, but the shares of the series may not be issued and sold except upon compliance with this section. Unless the submission presents novel or unusual questions, the Commissioner shall approve or reject the series not later than 10 days after the date the Commissioner considers the submission informationally complete. The Commissioner may require the submission of additional information as considered necessary to an informed decision.

§ 53-333. Change in outstanding capital and surplus.

(a) A State trust company may not reduce or increase its outstanding capital through dividend, redemption, issuance of shares, or otherwise, without the prior approval of the Commissioner, except as permitted by this section or rules adopted by the State Banking Commission.

(b) Unless otherwise restricted by rules, prior approval is not required for an increase in capital accomplished through:

(1) Issuance of shares of common stock for cash;

(2) Declaration and payment of pro rata share dividends as defined in the North Carolina Business Corporation Act; or

(c) Prior approval is not required for a decrease in surplus caused by incurred losses in excess of undivided profits.

§ 53-334. Capital notes or debentures.

(a) With the prior written approval of the Commissioner, any State trust company may, at any time, through action of its board, and without requiring action of its shareholders, issue and sell its capital notes or debentures which may be subordinate to other claims, including the claims of other creditors or classes of creditors or the shareholders.

(b) Capital notes or debentures may be convertible into shares of any class or series. The issuance and sale of convertible capital notes or debentures are subject to satisfaction of preemptive rights, if any, to the extent provided by law.

(c) Without the prior written approval of the Commissioner, interest due or principal repayable on outstanding capital notes or debentures may not be paid by a State trust company when the State trust company is in hazardous condition or insolvent, as determined by the Commissioner, or to the extent that payment will cause the State trust company to be in hazardous condition or insolvent.

(d) The amount of any outstanding capital notes or debentures that meet the requirements of this section and that are subordinated to unsecured creditors of the State trust company may be included in equity capital of the State trust company for purposes of determining hazardous condition or insolvency, and for any other purposes provided by rules adopted under this Article.

Subpart C. Investments and Loans.

§ 53-335. Investment in State trust company facilities.

(a) For the purposes of this Part, 'State trust company facility' means real estate, including an improvement, owned, or leased to the extent the lease or the leasehold improvements are capitalized, by a State trust company for the purpose of:

(1) Providing space for State trust company employees to perform their duties and space for parking by State trust company employees and customers;

(2) Conducting trust business, including meeting the reasonable needs and convenience of the State trust company's customers, computer operations, document and other item processing, maintenance and record retention, and storage;

(3) Holding, improving, and occupying as an incident to future expansion of the State trust company's facilities; or

(4) Conducting another activity authorized by rules adopted by the State Banking Commission.

(b) Without the prior written approval of the Commissioner, a State trust company may not directly or indirectly invest an amount in excess of its capital in State trust company facilities, furniture, fixtures, and equipment. Except as otherwise provided by rules adopted by the State Banking Commission, in computing this limitation a State trust company shall include:

(1) Its direct investment in State trust company facilities;

(2) Any investment in equity or investment securities of a company holding title to a facility used by the State trust company for the purposes specified by subsection (a) of this section;

(3) Any loan made by the State trust company to or on the security of equity or investment securities issued by a company holding title to a facility used by the State trust company; and

(4) Any indebtedness incurred on State trust company facilities by a company:

a. That holds title to the facility;

b. That is an affiliate of the State trust company; and

c. In which the State trust company is invested in the manner described by subdivision (2) or (3) of this subsection.

Except as otherwise provided by rules adopted by the State Banking Commission, in computing the limitation a State trust company may exclude an amount included under subdivisions (2) through (4) of this subsection to the extent any lease of a facility from the company holding title to the facility is capitalized on the books of the State trust company.

(c) Real estate acquired under subdivision (3) of subsection (a) of this section and not improved and occupied by the State trust company ceases to be a State trust company facility on the third anniversary of the date of its acquisition, unless the Commissioner on application grants written approval to further delay in the improvement and occupation of the property by the State trust company.

(d) A State trust company shall comply with generally accepted accounting principles, consistently applied, in accounting for its investment in and depreciation of State trust company facilities, furniture, fixtures, and equipment.

§ 53-336. Other real estate.

(a) A State trust company may not acquire real estate except:

(1) As permitted by G.S. § 53-335 or as otherwise provided by this Part, including rules adopted by the State Banking Commission;

(2) If necessary to avoid or minimize a loss on a loan or investment previously made in good faith; or

(3) With the prior written approval of the Commissioner.

(b) To the extent reasonably necessary to avoid or minimize loss on real estate acquired as permitted by subsection (a) of this section, a State trust company may exchange real estate for other real estate or personal property, invest additional funds in or improve real estate acquired under this subsection or subsection (a) of this section, or acquire additional real estate.

(c) A State trust company shall dispose of any real estate subject to subdivisions (1) and (2) of subsection (a) of this section not later than:

(1) The fifth anniversary of the date:

a. It was acquired, except as otherwise provided by rules adopted by the State Banking Commission;

b. It ceases to be used as a State trust company facility; or

(2) The third anniversary of the date it ceases to be a State trust company facility as provided by G.S. § 53-335.

(d) The Commissioner on application may grant one or more extensions of time for disposing of real estate if the Commissioner determines that:

- (1) The State trust company has made a good faith effort to dispose of the real estate; or
- (2) Disposal of the real estate would be detrimental to the State trust company.

§ 53-337. Securities.

(a) A State trust company may invest its corporate funds in any type or character of equity or investment securities subject to the limitations provided by this section.

(b) Unless the Commissioner approves maintenance of a lesser amount in writing, a State trust company shall invest and maintain an amount equal to at least forty percent (40%) of the State trust company's capital under G.S. § 53-329 in unencumbered cash, cash equivalents, and readily marketable securities.

(c) Subject to subsection (d) of this section, the total investment in equity and investment securities of any one issuer, obligor, or maker, held by the State trust company for its own account, may not exceed an amount equal to fifteen percent (15%) of the State trust company's capital. The Commissioner may authorize investments in excess of this limitation on written application if the Commissioner concludes that:

(1) The excess investment is not prohibited by other applicable law; and

(2) The safety and soundness of the requesting State trust company is not adversely affected.

(d) Notwithstanding subsection (c) of this section, a State trust company may purchase for its own account, without limitation and subject only to the exercise of prudent judgment:

(1) Bonds and other legally created general obligations of a state, an agency, or political subdivision of a state, the United States, or an agency or instrumentality of the United States;

(2) An investment security that this State, an agency or political subdivision of this State, the United States, or an agency or instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee;

(3) Securities that are offered and sold under 15 U.S.C. § 77d(5);

(4) Mortgage-related securities as defined in 15 U.S.C. § 78c(a), except that notwithstanding section 347 of the Riegle Community Development and Regulatory Improvement Act of 1994, a note or obligation that is secured by a first lien on one or more parcels of real estate on which is located one or more commercial structures is subject to the limitations of subsection (c) of this section;

(5) Investment securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Agricultural Mortgage Association, or the Federal Farm Credit Banks Funding Corporation;

(6) Investment securities issued or guaranteed by the North American Development Bank; or

(7) Securities issued by a Federal Home Loan Bank.

(e) Notwithstanding 15 U.S.C. § 77r-1(c), subsection (c) of this section applies to investments in small business related securities as defined by 15 U.S.C. § 78c(a).

(f) The State Banking Commission may adopt rules to establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of investment, or limit or expand investment authority for State trust companies for particular classes or categories of securities or other property.

§ 53-338. Transactions in State trust company shares.

(a) A State trust company may acquire its own shares if:

(1) The amount of its undivided profits is sufficient to fully absorb the acquisition of the shares under regulatory accounting principles; or

(2) The State trust company obtains the prior written approval of the Commissioner.

(b) A State trust company may acquire a lien upon its own shares if:

(1) The aggregate amount of indebtedness so secured is less than the amount of the State trust company's undivided profits; or

(2) The State trust company obtains the prior written approval of the Commissioner.

(c) Except with the prior written approval of the Commissioner:

(1) The State trust company may not hold its own shares as treasury stock for more than two years; and

(2) A lien acquired under this section may not by its original terms extend for more than two years.

§ 53-339. Subsidiaries.

(a) Except as otherwise provided by this Article or rules adopted by the State Banking Commission, a State trust company may acquire or establish a subsidiary to conduct any activity that may be conducted lawfully through the form of organization chosen for the subsidiary.

(b) A State trust company may not invest more than an amount equal to fifteen percent (15%) of its capital in a single subsidiary and may not invest an amount in excess of its capital in all subsidiaries. The amount of a State trust company's investment in a subsidiary is the total amount of the State trust company's investment in equity or investment securities issued by its subsidiary and any loans and extensions of credit from the State trust company to its subsidiary. The Commissioner may authorize investments in excess of these limitations on written application if the Commissioner concludes that:

(1) The excess investment is not prohibited by other applicable law; and

(2) The safety and soundness of the requesting State trust company is not adversely affected.

(c) A State trust company that intends to acquire, establish, or perform new activities through a subsidiary shall submit a letter to the Commissioner describing in detail the proposed activities of the subsidiary.

(d) The State trust company may acquire or establish a subsidiary or begin performing new activities in an existing subsidiary 30 days following the date the Commissioner receives the State trust company's letter, unless the Commissioner specifies an earlier or later date. The Commissioner may extend the 30-day period of review on a determination that the State trust company's letter raises issues that require additional information or additional time for analysis. If the period of review is extended, the State trust company may acquire or establish the subsidiary, or perform new activities in an existing subsidiary, only on prior written approval of the Commissioner.

(e) A subsidiary of a State trust company is subject to regulation by the Commissioner to the extent provided by this Article or rules adopted by the State Banking Commission. In the absence of limiting rules, the Commissioner may regulate a subsidiary as if it were a State trust company.

§ 53-340. Mutual funds.

(a) A State trust company may invest for its own account in equity securities of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. § 80a-1, et seq.) and the Securities Act of 1933 (15 U.S.C. § 77a, et seq.) if the portfolio of the investment company consists wholly of investments in which the State trust company could invest directly for its own account.

(b) If the portfolio of an investment company described in subsection (a) of this section consists wholly of investments in which the State trust company could invest directly without limitation under G.S. § 53-337(d), the State trust company may invest in the investment company without limitation.

(c) If the portfolio of an investment company described in subsection (a) of this section contains any investment that is subject to the limits of G.S. § 53-337(c), the State trust company may invest in the investment company not more than an amount equal to fifteen percent (15%) of the State trust company's capital. This provision does not apply to a money market fund.

(d) In evaluating investment limits under this Part, a State trust company may not be required to combine:

(1) The State trust company's pro rata share of the securities of an issuer in the portfolio of an investment company with the State trust company's pro rata share of the securities of that issuer held by another investment company in which the State trust company has invested; or

(2) The State trust company's own direct investment in the securities of an issuer with the State trust company's pro rata share of the securities of that issuer held by each investment company in which the State trust company has invested under this section.

§ 53-341. Engaging in commerce prohibited.

Except as otherwise provided by this Part, or rules adopted by the State Banking Commission, a State trust company may not invest its funds in trade or commerce by buying, selling, or otherwise dealing in goods or by owning or operating a business not

part of the State trust business, except as necessary to fulfill a fiduciary obligation to a client.

§ 53-342. Lending limits.

Subject to rules adopted by the State Banking Commission for the short-term extensions of credit to trust or other account relationships, a State trust company shall not engage in a loan business.

§ 53-343. Lease financing transactions.

A State trust company may not engage in leasing financing transactions, however this section shall not prohibit a State trust company from leasing property or equipment to conduct its authorized business.

§ 53-344. Trust deposits.

(a) A State trust company may deposit trust funds with itself as an investment if authorized by the seller or the beneficiary provided:

(1) It maintains as security for the deposits a separate fund of securities, legal for trust investments, under control of a federal reserve bank or a clearing corporation, as defined by either this State or elsewhere;

(2) The total market value of the security is at all times at least equal to the amount of the deposit;

(3) The separate fund is designated as such; and

(4) The separate fund is maintained under the control of another trust institution, bank, or government agency.

(b) A State trust company may make periodic withdrawals from or additions to the securities fund required by subsection (a) of this section as long as the required value is maintained. Income from the securities in the fund belongs to the State trust company.

(c) Security for a deposit under this section is not required for a deposit under subsection (a) of this section to the extent the deposit is insured by the Federal Deposit Insurance Corporation or its successor.

§ 53-345. Common investment funds.

(a) A State trust company may establish common trust funds to provide investment to itself as a fiduciary.

(b) The State Banking Commission may adopt rules to administer and carry out this section, including rules regarding investment and participation limitations, disclosure of fees, audit requirements, investment authority for particular classes or categories of securities or other property, advertising, exemptions, and other requirements that may be necessary to carry out this section.

§ 53-346. Borrowing limit.

Except with the prior written approval of the Commissioner, a State trust company may not have liabilities outstanding exceeding an amount equal to five times its capital.

§ 53-347. Pledge of assets.

A State trust company may not pledge or create a lien on any of its assets, except to secure the repayment of money borrowed or as specifically authorized or required by G.S. § 53-344, or by rules adopted by the State Banking Commission. An act, deed, conveyance, pledge, or contract in violation of this section is void.

Subpart D. Ownership; Governance; Mergers.

§ 53-348. Acquisition of control.

(a) Except as expressly otherwise permitted, a person may not, without the prior written approval of the Commissioner, directly or indirectly acquire control of a State trust company through a change in a legal or beneficial interest in voting securities of a State trust company or a corporation or other entity owning voting securities of a State trust company.

(b) This Part does not prohibit a person from negotiating to acquire, but not acquiring, control of a State trust company or a person from controlling a State trust company.

(c) This section does not apply to:

(1) The acquisition of securities in connection with the exercise of a security interest or otherwise in full or partial satisfaction of a debt previously contracted for in good faith if the acquiring person files written notice of acquisition with the Commissioner before the person votes the securities acquired.

(2) The acquisition of voting securities in any class or series by a controlling person who has previously complied with and received approval under this Article or who was identified as a controlling person in a prior application filed with and approved by the Commissioner.

(3) An acquisition or transfer by operation of law, will, or intestate succession if the acquiring person files written notice of acquisition with the Commissioner before the person votes the securities acquired.

(4) A transaction exempted by the Commissioner by rule or order because (i) the transaction is not within the purposes of this Article, or (ii) regulation of the transaction is not necessary or appropriate to achieve the objectives of this Article.

§ 53-349. Application regarding acquisition of control.

(a) The proposed transferee seeking approval to acquire control of a State trust company or a person that controls a State trust company shall file with the Commissioner:

(1) An application in the form adopted by the Commissioner;

(2) The filing fee required by statute or rule; and

(3) All information required by rule or that the Commissioner requires in a particular application as necessary to make an informed decision to approve or reject the proposed acquisition.

(b) If the proposed transferee includes any group of individuals or entities acting in concert, the information required by the Commissioner may be required of each member of the group.

(c) Personal financial information obtained by the Commissioner under this section is confidential and may not be disclosed by the Commissioner or any employee of the Commissioner's office.

(d) If the proposed transferee is not a North Carolina resident, a North Carolina corporation, or an out-of-state corporation qualified to do business in this State, a written consent to service of process will be required of a resident of this State in any action or suit arising out of or connected with the proposed acquisition.

(e) The proposed transferee shall publish notice of the application, its date of filing, and the identity of each participant, in the form specified by the Commissioner, in a newspaper of general circulation in the county where the State trust company's home office is located, promptly after the Commissioner accepts the application as complete. Publication of notice of an application filed in contemplation of a public tender offer subject to the requirements of 15 U.S.C. § 78n(d)(1) may be deferred for not more than 34 days after the date the application is filed if:

(1) The proposed transferee requests confidential treatment and represents that a public announcement of the tender offer and the filing of appropriate forms with the Securities and Exchange Commission or the appropriate federal banking agency, as applicable, will occur within the period of deferral; and

(2) The Commissioner determines that the public interest will not be harmed by the requested confidential treatment.

(f) The Commissioner may waive the requirement that a notice be published or permit delayed publication on a determination that waiver or delay is in the public interest.

§ 53-350. Hearing and decision on acquisition of control.

(a) Not later than the sixtieth day following the date the notice is published, the Commissioner shall approve the application or set the application for hearing. If the Commissioner sets a hearing, the Commissioner shall conduct the hearing pursuant to Chapter 150B of the General Statutes.

(b) Based on the record, the Commissioner may issue an order denying an application if:

(1) The acquisition would substantially lessen competition, be in restraint of trade, result in a monopoly, or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the trust industry in any part of this State, unless:

a. The anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served; and

b. The proposed acquisition is not in violation of the law of this State or the United States;

(2) The financial condition of the proposed transferee, or any member of a group composing the proposed transferee, might jeopardize the financial stability of the State trust company being acquired;

(3) Plans or proposals to operate, liquidate, or sell the State trust company or its assets are not in the best interest of the State trust company;

(4) The experience, ability, standing, competence, trustworthiness, and integrity of the proposed transferee, or any member of a group comprising the proposed transferee, are insufficient to justify a belief that the State trust company will be free from improper or unlawful influence or interference with respect to the State trust company's operation in compliance with law;

(5) The State trust company will not be solvent, have adequate capitalization, or be in compliance with the laws of this State after the acquisition;

(6) The proposed transferee has failed to furnish all information pertinent to the application reasonably required by the Commissioner; or

(7) The proposed transferee is not acting in good faith.

(c) If an application filed under this section is approved by the Commissioner, the transaction may be consummated. Any written commitment from the proposed transferee offered to and accepted by the Commissioner as a condition for approval of the application is enforceable against the State trust company and the transferee and is considered for all purposes an agreement under this Article.

§ 53-351. Appeal.

Any order entered by the Commissioner with respect to an application for acquisition or control of a State trust company shall be subject to review by the State Banking Commission for entry of a final agency decision.

§ 53-352. Objection to other transfer.

Nothing in this Article shall be construed to prevent the Commissioner from investigating, commenting on, or seeking to enjoin or set aside a transfer of voting securities that evidence a direct or indirect interest in a State trust company, regardless of whether the transfer is included within this Article, if the Commissioner considers the transfer to be against the public interest.

§ 53-353. Criminal penalties.

A person who knowingly fails or refuses to file the application required by G.S. § 53-349 shall be guilty of a Class 1 misdemeanor.

§ 53-354. Voting securities held by State trust company.

(a) Voting securities of a State trust company held by it in a fiduciary capacity under a will or trust, whether registered in its own name or in the name of its nominee, may not be voted in the election of directors or on a matter affecting the compensation of directors, officers, or employees of the State trust company in that capacity, unless:

(1) Under the terms of the will or trust, the manner in which the voting securities are to be voted may be determined by a donor or beneficiary of the will or trust, and the donor or beneficiary actually makes the determination in the matter at issue;

(2) The terms of the will or trust expressly direct the manner in which the securities shall be voted to the extent that no discretion is vested in the State trust company as fiduciary; or

(3) The securities are voted solely by a cofiduciary that is not an affiliate of the State trust company, as if the cofiduciary were the sole fiduciary.

(b) Voting securities of a State trust company that cannot be voted under this section are considered to be authorized but unissued for purposes of determining the procedures for and results of the affected vote.

§ 53-355. Bylaws.

Each State trust company shall adopt bylaws and may amend its bylaws from time to time for the purposes of and in accordance with the procedures set forth in the North Carolina Business Corporation Act.

§ 53-356. Board of directors.

(a) The board of a State trust company shall consist of not fewer than five or more than 25 directors, the majority of whom shall be residents of this State. The principal executive officer of the State trust company shall be a member of the board. The principal executive officer acting in the capacity of a board member is the board's presiding officer unless the board elects a different presiding officer to perform the duties as designated by the board.

(b) Unless the Commissioner consents otherwise in writing, a person may not serve as director of a State trust company if:

(1) The State trust company incurs an unreimbursed loss attributable to a charged-off obligation of or holds a judgment against the person or an entity that was controlled by the person at the time of funding and at the time of default on the loan that gave rise to the judgment or charged-off obligation;

(2) The person has been convicted of a felony; or

(3) The person has violated a provision of Chapter 36A of the General Statutes, relating to loan of trust funds and purchase or sale of trust property by the trustee, and the violation has not been corrected.

(c) If a State trust company does not elect directors before the sixty-first day following the date of its regular annual meeting, the Commissioner may appoint a conservator under G.S. § 53-421 to operate the State trust company and elect directors, as appropriate. If the conservator is unable to locate or elect persons willing and able to serve as directors, the Commissioner may close the State trust company for liquidation.

(d) A vacancy on the board that reduces the number of directors to fewer than five shall be filled not later than the thirtieth day following the date the vacancy occurs. After 30 days following the date the vacancy occurs, the Commissioner may appoint a conservator under G.S. § 53-421 to operate the State trust company and elect a board of not fewer than five persons to resolve the vacancy. If the conservator is unable to locate

or elect five persons willing and able to serve as directors, the Commissioner may close the State trust company for liquidation.

(e) Before each term to which a person is elected to serve as a director of a State trust company, the person shall submit an affidavit for filing in the minutes of the State trust company stating that the person, to the extent applicable:

(1) Accepts the position and is not disqualified from serving in the position;

(2) Will not violate or knowingly permit an officer, director, or employee of the State trust company to violate any law applicable to the conduct of business of the State trust company; and

(3) Will diligently perform the duties of the position.

(f) An advisory director is not considered a director if the director:

(1) Is not elected by the shareholders of the State trust company;

(2) Does not vote on matters before the board or a committee of the board and is not counted for purposes of determining a quorum of the board or committee; and

(3) Provides solely general policy advice to the board.

§ 53-357. Required board meetings.

The board of a State trust company shall hold at least one regular meeting each quarter. At each regular meeting the board shall review and approve the minutes of the prior meeting and review the operations, activities, and financial condition of the State trust company. The board may designate committees from among its members to perform these duties and approve or disapprove the committees' reports at each regular meeting. All actions of the board shall be recorded in its minutes.

§ 53-358. Officers.

(a) The board shall annually appoint the officers of the State trust company, who shall serve at the pleasure of the board. The State trust company shall have a principal executive officer primarily responsible for the execution of board policies and operation of the State trust company, and an officer responsible for the maintenance and storage of all corporate books and records of the State trust company, and for required attestation of signatures. These positions may not be held by the same person. The board may appoint other officers of the State trust company as the board considers necessary.

(b) Unless expressly authorized by a resolution of the board recorded in its minutes, an officer or employee may not create or dispose of a State trust company asset or create or incur a liability on behalf of the State trust company.

§ 53-359. Certain criminal offenses.

(a) An officer, director, employee, or shareholder of a State trust company commits an offense if the person knowingly:

(1) Conceals information or a fact, or removes, destroys, or conceals a book or record of the State trust company for the purpose of concealing information or a fact from the Commissioner or an agent of the Commissioner; or

(2) For the purpose of concealing, removes or destroys any book or record of the State trust company that is material to a pending or anticipated legal or administrative proceeding.

(b) An officer, director, or employee of a State trust company commits an offense if the person knowingly makes a false entry in the books or records or in any report or statement of the State trust company.

(c) An offense under this section shall be a Class H felony.

§ 53-360. Transactions with management and affiliates.

(a) Without the prior approval of a disinterested majority of the board recorded in the minutes or, if a disinterested majority cannot be obtained, the prior written approval of the Commissioner, a State trust company may not directly or indirectly:

(1) Sell or lease an asset of the State trust company to an officer, director, or principal shareholder of the State trust company or an affiliate of the State trust company;

(2) Purchase or lease an asset in which an officer, director, or principal shareholder of the State trust company or an affiliate of the State trust company has an interest; or

(3) Subject to G.S. § 53-342 extend credit to an officer, director, or principal shareholder of the State trust company or an affiliate of the State trust company.

(b) Notwithstanding subsection (a) of this section, a lease transaction described in subdivision (2) of subsection (a) of this section involving real property may not be consummated, renewed, or extended without the prior written approval of the Commissioner. For purposes of this subsection only, an affiliate of the State trust company does not include a subsidiary of the State trust company.

(c) Subject to G.S. § 53-342, a State trust company may not directly or indirectly extend credit to an employee, officer, director, or principal shareholder of the State trust company or an affiliate of the State trust company, unless:

(1) The extension of credit:

a. Is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the State trust company with persons who are not employees, officers, directors, or principal shareholders or affiliates of the State trust company; and

b. Does not involve more than the normal risk of repayment or present other unfavorable features; and

(2) The State trust company follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the State trust company with persons who are not employees, officers, directors, or principal shareholders or affiliates of the State trust company.

(d) An officer or director of the State trust company who knowingly participates in or permits a violation of this section shall be guilty of a Class H felony.

(e) The State Banking Commission may adopt rules to administer and carry out this section, including rules to establish limits, requirements, or exemptions other than those specified by this section for particular categories of transactions.

§ 53-361. Fiduciary responsibility.

The board of a State trust company is responsible for the proper exercise of fiduciary powers by the State trust company and each matter pertinent to the exercise of fiduciary powers, including:

- (1) The determination of policies;
- (2) The investment and disposition of property held in a fiduciary capacity; and
- (3) The direction and review of the actions of each officer, employee, and committee used by the State trust company in the exercise of its fiduciary powers.

§ 53-362. Record keeping.

A State trust company shall keep its fiduciary records separate and distinct from other records of the State trust company. The fiduciary records shall contain all material information relative to each account as appropriate under the circumstances.

§ 53-363. Bonding requirements.

(a) The board of a State trust company shall require protection and indemnity for clients in reasonable amounts established by rules adopted under this Article, against dishonesty, fraud, defalcation, forgery, theft, and other similar insurable losses, with corporate insurance or surety companies:

- (1) Authorized to do business in this State; or
- (2) Acceptable to the Commissioner and otherwise lawfully permitted to issue the coverage against those losses in this State.

(b) Except as otherwise provided by rule, coverage required under subsection (a) of this section shall include each director, officer, and employee of the State trust company without regard to whether the person receives salary or other compensation.

§ 53-364. Reports of apparent crime.

A trust company that is the victim of a robbery, has a shortage of corporate or fiduciary funds in excess of five thousand dollars (\$5,000), or is the victim of an apparent or suspected misapplication of its corporate or fiduciary funds or property in any amount by a director, officer, or employee shall report the robbery, shortage, or apparent or suspected misapplication to the Commissioner within 48 hours after the time it is discovered. The initial report may be oral if the report is promptly confirmed in writing. The trust company or a director, officer, employee, or agent is not subject to liability for defamation or any other charge resulting from information supplied in the report.

§ 53-365. Merger authority.

(a) With the prior written approval of the Commissioner, a State trust company may merge or consolidate with another trust company or corporate entity.

(b) Implementation of the plan of merger by the parties and approval of the board or shareholders shall be made or obtained as provided by the North Carolina Business Corporation Act.

§ 53-366. Merger application.

(a) A copy of the original articles of merger and an application in the form required by the Commissioner shall be filed with the Commissioner. The Commissioner shall investigate the condition of the merging parties and may require the submission of additional information as considered necessary for an informed decision.

(b) The Commissioner may approve the merger if:

(1) Each resulting State trust company will be solvent and have adequate capitalization for its business and location;

(2) Each resulting State trust company has in all respects complied with the statutes and rules relative to the organization of a State trust company;

(3) All fiduciary obligations and liabilities of each State trust company that is a party to the merger have been discharged properly or otherwise have been assumed or retained by a State trust company or other fiduciary lawfully;

(4) Each surviving, new, or acquiring party that is not authorized to engage in the trust business will not engage in the trust business and has in all respects complied with the laws of this State; and

(5) All conditions imposed by the Commissioner have been satisfied or otherwise resolved.

§ 53-367. Notice and investigation of merger; decision; hearing and appeal.

(a) The Commissioner shall notify the parties to the transaction when the application is complete and accepted for filing and all required fees have been paid. Promptly following this notification, the parties shall publish notice of the proposed merger and solicit comments in the form specified by the Commissioner to solicit the views of potentially affected persons specified by the Commissioner by rule.

(b) At the expense of the parties to a merger, the Commissioner shall investigate the proposed transaction, including the character of the proposed directors, officers, and principal shareholders. The Commissioner shall prepare a report of the investigation, and any person may request a copy of the nonconfidential portions of the report as provided by Chapter 132 of the General Statutes. Rules adopted may specify the confidential and nonconfidential character of information obtained by the Commissioner under this section. Except as provided by rules regarding confidential information, the financial statements of officers and directors are confidential and shall not be disclosed to the public.

(c) Any person may file a protest to a merger application. The manner and time in which protest may be filed shall be adopted by the Commission by rule.

(d) Not later than the thirtieth day following the last date notification is published pursuant to subsection (a) of this section, the Commissioner shall determine whether the application meets the requirements of G.S. § 53-365, based on the

application and investigation, and shall enter an order approving the merger or shall set a hearing pursuant to Article 3A of Chapter 150B of the General Statutes.

(e) Any order entered by the Commissioner with respect to an Application for Merger shall be subject to review by the State Banking Commission for entry of a final agency decision.

§ 53-368. Rights of dissenters to mergers.

A shareholder may dissent from the merger to the extent and by following the procedure provided by the North Carolina Business Corporation Act.

§ 53-369. Authority to act as disbursing agent.

The purchasing trust institution may hold the purchase price and any additional funds delivered to it by the selling institution in trust for the selling institution and may act as agent of the selling institution in disbursing those funds in trust by paying the creditors of the selling institution. If the purchasing trust institution acts under a written agency contract that (i) is approved by the Commissioner; (ii) specifically names each creditor and the amount to be paid each; and (iii) limits the agency to the purely ministerial act of paying creditors the amounts due them as determined by the selling institution and does not involve discretionary duties or authority other than the identification of the creditors named, then the purchasing trust institution:

(1) May rely on the contract of agency and the instructions included in it;
and

(2) Is not responsible for:

a. Any error made by the selling institution in determining its liabilities, and creditors to whom the liabilities are due, or the amounts due the creditors; or

b. Any preference that results from the payments made under the contract of agency and the instructions included in it.

§ 53-370. Liquidation of selling State trust company.

If the selling trust institution is at any time after the sale of assets voluntarily or involuntarily closed for liquidation by a State or federal regulatory agency, the purchasing trust company shall pay to the receiver of the selling institution the balance of the funds held by it in trust for the selling institution and not yet paid to the creditors of the selling institution. Without further action, the purchasing trust institution is discharged of all responsibilities to the selling institution, its receiver, or its creditors or shareholders.

§ 53-371. Payment to creditors.

Payment to a creditor of the selling institution of the amount to be paid the person under the terms of the contract of agency may be made by the purchasing trust company by (i) opening an agency account in the name of the creditor, (ii) crediting the account with the amount to be paid the creditor under the terms of the agency contract, and (iii)

mailing or personally delivering a duplicate ticket evidencing the credit to the creditor at the person's address shown in the records of the selling institution. The relationship between the purchasing trust institution and the creditor is that of agent to creditor only to the extent of the credit reflected by the ticket.

§ 53-372. Sale of assets.

(a) The board of a State trust company, with the Commissioner's approval, may cause a State trust company to sell all or substantially all of its assets, including the right to control accounts established with the trust company, without shareholder approval if the Commissioner finds:

(1) The interests of the State trust company's clients and creditors are jeopardized because of insolvency or imminent insolvency of the State trust company; and

(2) The sale is in the best interest of the State trust company's clients and creditors.

(b) A sale under this section shall include an assumption and promise by the buyer to pay or otherwise discharge:

(1) All of the State trust company's liabilities to clients and depositors;

(2) All of the State trust company's liabilities for salaries of the State trust company's employees incurred before the date of the sale;

(3) Obligations incurred by the Commissioner arising out of the supervision or sale of the State trust company; and

(4) Fees and assessments due the Commissioner's office.

(c) This section does not limit the incidental power of a State trust company to buy and sell assets in the ordinary course of business.

(d) This section does not affect the Commissioner's right to take action under another law. The sale by a trust company of all or substantially all of its assets with shareholder approval is considered a voluntary dissolution and liquidation and is governed by Subpart A of Part 5 of this Article.

Subpart E. Private Trust Companies

G.S. 53-373. Private Trust Companies

(a) The following definitions apply in this section:

(1) "Family member" means any individual who is related within the fourth degree of affinity or consanguinity to an individual or individuals who control a private trust company or which is controlled by one or more trusts or charitable organizations established by such individual or individuals.

(2) "Transact business with the general public" means any sales, solicitation, arrangement, agreements, or transactions to provide trust or other business services, whether or not for a fee, commission, or any other type of remuneration, with any client that is not a family member or a sole proprietorship, partnership, joint venture, association, trust, estate, business trust, or other company that is not 100% owned by one or more family members.

(b) All individuals who control a private trust company or establish trusts or charitable organizations controlling such private trust company must be related within the second degree of affinity or consanguinity.

(c) A private trust company engaging in the trust business in this state shall comply with each and every provision of this Article applicable to a trust company unless expressly exempted therefrom in writing by the Commissioner pursuant to this section, by rule adopted by the State Banking Commission or under a predecessor statute.

(d) A private trust company or proposed private trust company may request in writing that it be exempted from specified provisions of sections G.S. § 53-307(b), G.S. § 53-324(11), G.S. § 53-325(b), G.S. § 53-326(a) and (b), G.S. § 53-329(a), G.S. § 53-336, G.S. § 53-337(b), (c) and (d), G.S. § 53-341, and G.S. § 53-342. The Commissioner may grant the exemption in whole or in part if the Commissioner finds that the private trust company does not and will not transact business with the general public.

(e) At the expense of the private trust company, the Commissioner may examine or investigate the private trust company in connection with an application for exemption. Unless the application presents novel or unusual questions, the Commissioner shall approve the application for exemption or set the application for hearing not later than the 61st day after the date the Commissioner considers the application complete and accepted for filing. The Commissioner may require the submission of additional information as considered necessary to an informed decision.

(f) Any exemption granted under this section may be made subject to conditions or limitations imposed by the Commissioner consistent with this Part.

(g) The State Banking Commission may adopt rules defining other circumstances that do not constitute transaction of business with the public, specifying the provisions of this Act that are subject to an exemption request, and establishing procedures and requirements for obtaining, maintaining, or revoking exempt status.

G.S. § 53-374. Requirements to Apply for and Maintain Status as a Private Trust Company.

(a) Application.

(1) A private trust company requesting an exemption from the provisions of this Act pursuant to section G.S. § 53-373 shall file an application with the Commissioner containing the following:

- a. a nonrefundable application fee as set by rules
- b. a detailed statement under oath showing the private trust company's assets and liabilities as of the end of the month previous to the filing of the application;
- c. a statement under oath of the reason for requesting the exemption;
- d. a statement under oath that the private trust company is not currently transacting business with the public and that the company will not conduct business with the public without the prior written permission of the Commissioner;
- e. the current street mailing address and telephone number of the physical location in this state at which the private trust company will maintain its books and records, together with a statement under oath that the address given is true and

correct and is not a U.S. Postal Service post office box or a private mail box, postal box, or mail drop; and

f. listing of the specific provisions of the Act for which the request for exemption is made.

(2) The Commissioner shall not approve a private trust company exemption unless the application is completed as required in paragraph (1) of this section.

(b) Requirements.

(1) To maintain status as an exempt private trust company under this Act, the private trust company shall comply with the following:

a. An exempt private company shall not transact business with the public.

b. An exempt private trust company shall file an annual certification that it is maintaining the conditions and limitations of its exempt status. This annual certification shall be filed on a form provided by the Commissioner and be accompanied by a fee determined by the State Banking Commissioner by rule. The annual certification shall be filed on or before December 31st of each year. No annual certification shall be valid unless it bears an acknowledgment stamped by the Commissioner. The Commissioner shall have 30 days from the date of receipt to return a copy of the acknowledged annual certification to the private trust company. The burden shall be on the exempt private trust company to notify the Commissioner of any failure to return an acknowledged copy of any annual certification within the 30-day period. The Commissioner may examine or investigate the private state trust company periodically as necessary to verify the certification.

c. An exempt private trust company shall comply with the principal office provisions of G.S. § 53-300 of this Article and with the address and telephone requirements of subsection (a)(1)(e) of this section.

(c) Change of Control. Control of an exempt private trust company may not be transferred or sold with exempt status. In any change of control, the acquiring control person must comply with the provisions of this Article and the exempt status of the private trust company shall automatically terminate upon the effective date of the transfer. A separate application for exempt status must be filed if the acquiring person wishes to obtain or continue an exemption pursuant to this section.

(d) Authority to Revoke. The Commissioner shall have authority to revoke the exempt status of a private trust company in the following circumstances:

(1) the exempt private trust company makes a false statement under oath on any document required to be filed by the Article or by any rule promulgated by the State Banking Commission; or

(2) the exempt private trust company fails to submit to an examination as required by G.S. § 53-377, or

(3) the exempt private trust company withholds requested information from the Commissioner; or

(4) the exempt private trust company violates any provision of this section applicable to exempt private trust companies.

(e) Notification of Revocation of Exemption. If the Commissioner determines from examination or other credible evidence that an exempt private trust

company has violated any of the requirements of this section, the Commissioner may by personal delivery or registered or certified mail, return receipt requested, notify the exempt private trust company in writing that the private trust company's exempt status has been revoked. The notification must state grounds for the revocation with reasonable certainty. The notice must state its effective date, which may not be before the 5th day after the date the notification is mailed or delivered. The revocation takes effect for the private trust company if the private trust company does not request a hearing in writing before the effective date. After taking effect the revocation is final and nonappealable as to that private trust company, and the private trust company shall be subject to all of the requirements and provisions of the Article applicable to non-exempt state trust companies.

(f) Compliance Period. A private trust company shall have five calendar days after the revocation is effective to comply with the provisions of this Article from which it was formerly exempt. If, however, the Commissioner determines, at the time of revocation, that the private trust company has been engaging in or attempting to engage in acts intended or designed to deceive or defraud the public, the Commissioner may shorten or eliminate, in the Commissioner's sole discretion, the 5 calendar days compliance period.

(g) Remedies for Failure to Comply. If the private trust company does not comply with all of the provisions of this Article, including such capitalization requirements as have been determined by the Commissioner as necessary to assure the safety and soundness of the private trust company, within the prescribed time period, the Commissioner may:

(1) institute any action or remedy prescribed by this Article or any applicable rule or regulation, or

(2) refer the private trust company to the Attorney General for institution of a quo warranto proceeding to revoke the charter.

(h) Private Trust Company Under Prior Law. A private trust company that currently has a valid exemption under a predecessor statute is considered exempt under this Article.

G.S. § 53-375. Conversion to Public Trust Company.

(a) A private trust company may terminate its status as a private trust company and commence transacting business with the general public. A private trust company desiring to commence transacting business with the general public shall file a notice on a form prescribed by the Commissioner, which shall set forth the name of the private trust company and an acknowledgment that any exemption granted or otherwise applicable to the private trust company pursuant to G.S. § 53-373 hereof shall cease to apply on the effective date of such notice, furnish a copy of the resolution adopted by the board authorizing the private trust company to commence transacting business with the general public, and pay the filing fee, if any, prescribed by the Commissioner.

(b) The private trust company may commence transacting business with the general public on the 31st day after the date the Commissioner receives the notice, unless the Commissioner specifies an earlier or later date.

(c) The 30-day period of review may be extended by the Commissioner on determination that the written notice raises issues that require additional information or additional time for analysis. If the period for review is extended, the notificant may

commence transacting business with the public only on prior written approval by the Commissioner.

(d) The Commissioner may deny approval of the notice of the private trust company to commence transacting business with the general public if the Commissioner finds that it lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed transacting of business of the general public would be contrary to the public interest or if the Commissioner determines that it will not within a reasonable period be in compliance with any provision of this Article from which it had been previously exempted pursuant to G.S. § 53-373.

PART 4. Enforcement Actions

Subpart A. Supervision and Examination.

§ 53-376. Authorized trust institution.

For the purposes of this Part, the term "authorized trust institution" shall be defined to mean any State trust company, trust office, or representative trust office.

§ 53-377. Commissioner shall have supervision over authorized trust institutions and shall examine.

Every authorized trust institution shall be under the supervision of the Commissioner. The Commissioner shall have the authority to periodically examine, and shall execute and enforce through examiners and any other agents as are now or may hereafter be created or appointed, all laws that are now or may be enacted relating to authorized trust institutions. For the more complete and thorough enforcement of the provisions of this Article, the State Banking Commission may adopt any rules not inconsistent with the provisions of this Article, to carry out the provisions of the laws relating to authorized trust institutions and to insure safe and conservative management of an authorized trust institution under its supervision, taking into consideration the appropriate interest of the creditors, stockholders, and the public in their relations with the authorized trust institutions. All authorized trust institutions doing business under the provisions of this Article shall conduct their business in a manner consistent with all laws relating to authorized trust institutions and all rules and instructions that may be adopted or issued by the State Banking Commission.

§ 53-378. Assessment of State trust companies.

(a) For the cost of examinations and other services, each State trust company shall pay into the Office of the Commissioner of Banks, within 10 days after notice, an annual assessment of six thousand dollars (\$6,000.00) plus one dollar (\$1.00) per one hundred thousand dollars (\$100,000) of trust assets, exclusive of real estate carried as such. The amount of trust assets shall be determined as of the close of business on December 31 each year.

(b) If an application for merger or acquisition and control occasions an examination or if the Commissioner determines that the financial condition or manner of operation of a State trust company warrants further examination or an increased level of supervision, a State trust company may be subject to additional assessment not to exceed an amount determined in accordance with the schedule set forth in subsection (a) of this section.

(c) The State Banking Commission may adopt by rule the amount to be collected for processing any application or petition or other proceeding required by law to be filed with the Commissioner of Banks and for obtaining copies of any publication or public record of the Banking Commission.

(d) The Commissioner may collect the assessments provided for in subsections (a) and (b) of this section annually or in periodic installments as approved by the State Banking Commission.

Subpart B. Enforcement Orders; Trust Company Management.

§ 53-379. Administrative orders; penalties for violation.

(a) In addition to any other powers conferred by this Chapter, the Commissioner may:

(1) Order any authorized trust institution, or subsidiary thereof, or any director, officer, or employee to cease and desist violating any provision of this Article or any lawful regulation issued thereunder.

(2) Order any authorized trust institution, or subsidiary thereof, or any director, officer, or employee to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of the public in their relationship with the authorized trust institution.

(3) Order any company to cease engaging in an unauthorized trust activity.

(4) Enter any order pursuant to G.S. § 53-312.

(b) The Commissioner may impose a civil money penalty of not more than one thousand dollars (\$1,000) for each violation by any authorized trust institution, or subsidiary thereof, or any director, officer, or employee of an order issued under subdivision (1) of subsection (a) of this section. The Commissioner may impose a civil money penalty of not more than five hundred dollars (\$500.00) per day for each day that an authorized trust institution, or subsidiary thereof, or any director, officer, or employee violates a cease and desist order issued under subdivision (2) or (3) of subsection (a) of this section. All civil money penalties collected under this section shall be paid to the county school fund.

§ 53-380. Notice and opportunity for hearing.

Consistent with Chapter 150B of the General Statutes, notice and opportunity for hearing shall be provided before the Commissioner may act pursuant to G.S. 53-375. In cases involving extraordinary circumstances requiring immediate action, the

Commissioner may take action without a hearing, but shall promptly afford a subsequent hearing upon application to rescind the action taken.

§ 53-381. Subpoena power and examination under oath.

The Commissioner may subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject related to a duty imposed or a power vested in the Commissioner.

§ 53-382. Removal of directors, officers, and employees.

The Commissioner may require the immediate removal from office of any officer, director, or employee of any authorized trust institution, who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the authorized trust institution, or who persistently violates the laws of this State or the lawful orders, instructions, and rules issued by the State Banking Commission.

§ 53-383. Review by the State Banking Commission; additional penalties.

Administrative orders issued by the Commissioner and civil money penalties imposed for violation of orders shall be subject to review by the State Banking Commission, which may amend, modify, or disapprove orders or penalties at any regular or special meeting. Notwithstanding any penalty imposed by the Commissioner, the State Banking Commission may after notice and opportunity for hearing, impose, enter judgment for, and enforce by appropriate process, a penalty of not more than ten thousand dollars (\$10,000) against any authorized trust institution, or subsidiary thereof, or against any of its directors, officers, or employees for violating any lawful orders of the Commissioner. All civil money penalties collected under this section shall be paid to the county school fund.

PART 5. Dissolution and Receivership; Conservatorship.

Subpart A. Voluntary Dissolution and Liquidation.

§ 53-384. Required vote of shareholders.

A State trust company may go into voluntary liquidation and be closed and may surrender its charter and franchise as a corporation of this State by the affirmative votes of its shareholders or participants owning two-thirds of its stock.

§ 53-385. Corporate procedure.

Shareholder action to liquidate a State trust company shall be taken at a meeting of the shareholders duly called by resolution of the board of directors, written notice of which, stating the purpose of the meeting, shall be mailed to each shareholder, or in case of a shareholder's death, to the shareholder's legal representative or heirs at law,

addressed to the shareholder's last known residence 10 days previous to the date of the meeting. If stockholders shall, by the required vote, elect to liquidate a trust company, a certified copy of all proceedings of the meeting at which the action was taken, verified by the oath of the president and secretary, shall be transmitted to the Commissioner for approval.

§ 53-386. Authority to liquidate; publication.

If the Commissioner approves the liquidation, the Commissioner shall issue to the State trust company under the Commissioner's seal, a permit for liquidation. No permit shall be issued by the Commissioner until the Commissioner is satisfied that provision has been made by the State trust company to satisfy and pay off all creditors. If not so satisfied, the Commissioner shall refuse to issue a permit, shall be authorized to take possession of the State trust company and its assets and business, and shall hold and liquidate the State trust company in the manner provided in this Article. When the Commissioner approves the voluntary liquidation of a State trust company, the directors of the State trust company shall cause to be published in a news- paper in the county in which the trust company is located, or if no newspaper is published in the county, then in a newspaper having a general circulation in the county, a notice that the State trust company is closing down its affairs and going into liquidation and notify its creditors to present their claims for payment. The notice shall be published once a week for four consecutive weeks.

§ 53-387. Examination and reports.

When any State trust company is in process of voluntary liquidation, it shall be subject to examination by the Commissioner and shall furnish any reports required by the Commissioner.

§ 53-388. Unclaimed property.

All unclaimed property remaining with a liquidated State trust company shall be subject to the provisions of Chapter 116B of the General Statutes.

§ 53-389. Sell or transfer of property.

Whenever the Commissioner approves, a State trust company may sell and transfer to any other trust institution, whether State or federally chartered, all of its assets of every kind upon any terms agreed upon and approved by the Commissioner and by two-thirds vote of its board of directors. A certified copy of the minutes of any meeting at which the action is taken, under the oath of the president and secretary, together with a copy of the contract of sale and transfer, shall be filed with the Commissioner. Whenever voluntary liquidation is approved by the Commissioner or the sale and transfer of the assets of any State trust company is approved by the Commissioner, a certified copy of the approval under seal of the Commissioner, filed in the office of the Secretary of State, shall authorize the cancellation of the charter of the State trust company, subject,

however, to its continued existence, as provided by this Article and the general law relative to corporations.

Subpart B. Involuntary Dissolution and Liquidation.

§ 53-390. When Commissioner may take charge.

The Commissioner may take possession of the business and property of any State trust company whenever it shall appear that the trust company:

- (1) Has violated its charter or any laws applicable thereto;
- (2) Is conducting its business in an unauthorized or unsafe manner;
- (3) Is in a hazardous condition to transact its business;
- (4) Has an impairment of its capital;
- (5) Has become otherwise insolvent;
- (6) Has neglected or refused to comply with the terms of a duly issued lawful order of the Commissioner;
- (7) Has refused, upon proper demand, to submit its records, affairs, and concerns for inspection and examination of a duly appointed or authorized examiner of the Commissioner; or
- (8) Has made a voluntary assignment of its assets to trustees.

The Commissioner may take possession of the business and property of any State trust company whenever it shall appear that its officers have refused to be examined upon oath regarding its affairs.

§ 53-391. Directors may act.

A State trust company may place its assets and business under the control of the Commissioner for liquidation by a resolution of a majority of its directors upon notice to the Commissioner, and, upon taking possession of the State trust company, the Commissioner, or duly appointed agent, shall retain possession thereof until the State trust company is authorized by the Commissioner to resume business or until the affairs of the State trust company are fully liquidated, as herein provided. No State trust company shall make any general assignment for the benefit of its creditors except by surrendering possession of its assets to the Commissioner, as herein provided. Whenever any State trust company for any reason shall suspend operations for any length of time, the State trust company shall, immediately upon suspension of operations, be deemed in the possession of the Commissioner and subject to liquidation hereunder.

§ 53-392. Notice of seizure; bar to attachment.

When the Commissioner, or duly appointed agent, takes possession of any State trust company under G.S. § 53-390 or G.S. § 53-391, the Commissioner or agent shall, within 48 hours, file with the clerk of the superior court in the county where the State trust company is located, a notice of the action which shall state the reason for the action and which shall be deemed the equivalent of a summons and complaint against the State trust company in an action in the superior court except that it shall not be necessary to serve the notice. The taking possession of any State trust company shall be effective on

the date when the authority was exercised and from and after the time all assets and property of the State trust company, of whatever nature, shall be deemed to be in possession of the Commissioner, and the exercise of the authority shall operate as a bar to any attachment or other legal proceeding against the State trust company or its assets. After the Commissioner's exercise of authority, no lien shall be acquired, in any manner binding or affecting any of the assets of the State trust company and every transfer or assignment made thereafter by the State trust company, or by its authority, of the whole or any part of its assets, shall be null and void; and the Commissioner shall be substituted in place of the State trust company in all actions in the State or federal courts, pending at the time of the exercise of the authority.

§ 53-393. Notice to trust institutions, corporations, and others holding assets; liens not to accrue.

Upon taking possession of the assets and business of any State trust company, the Commissioner, or duly appointed agent, shall forthwith give notice, by mail or otherwise, of the action to all trust institutions or other persons or corporations holding, or having in possession, any assets of the State trust company. No trust company or other person or corporation shall have a lien or charge for any payment, advance, or clearance made, or liability incurred against any of the assets of the State trust company after possession has been taken as provided under this section, except as hereinafter provided.

§ 53-394. Permission to resume business.

(a) After the Commissioner has taken possession of any State trust company, the company may resume business upon terms and conditions approved by the State Banking Commission.

(b) When possession of a State trust company has been taken either pursuant to G.S. § 53-390 or G.S. § 53-391, the conditions under which it may resume business shall be fully stated in writing and a copy thereof shall be filed with the clerk of superior court in the action required to be commenced in cases against a State trust company under the provisions for involuntary dissolution and liquidation in this Article.

(c) Notwithstanding subsections (a) and (b) of this section, no State trust company that has been taken in possession by the Commissioner under the provisions of this Article shall be reopened to resume a trust business unless and until (i) the State trust company has been completely restored to solvency; (ii) the capital stock, if impaired, has been entirely restored to solvency; (iii) the capital stock, if impaired, has been entirely restored in cash or United States government securities; and (iv) it shall clearly appear to the Commissioner that the State trust company may be reopened with safety to the public and the reopening is necessary to serve the business interest of the community.

§ 53-395. Remedy for seizure; answer to notice, injunction; and appeal.

Whenever any State trust company, of whose assets and business the Commissioner has taken possession as herein provided, except where possession is taken under G.S. § 53-390, shall deem itself aggrieved thereby, it may, at any time within 10

days after the filing of the notice with the clerk of the superior court, file an answer to the notice and may also upon notice to the Commissioner, apply to the resident or presiding judge of the superior court for an injunction to enjoin further proceedings by the Commissioner. The judge of the superior court may cite the Commissioner to show cause within 10 days thereafter why further proceedings should not be enjoined, and, after hearing the allegations and proof of the parties with respect to the condition of the State trust company, may dismiss an application for injunction or may enjoin further proceedings under this section by the Commissioner. If the judge enjoins further action of the Commissioner and permits the reopening of the State trust company, the judge may require of the State trust company a surety bond as the judge deems necessary to insure its solvency, payable to the Commissioner for the sole benefit of the general creditors of the State trust company, and upon any terms the judge deems proper. Either party has the right to appeal a decision as in other actions.

§ 53-396. Collection of debts and claims; commissioner succeeds to all property of the State trust company.

(a) Upon taking possession of the assets and business of any State trust company by the Commissioner, or a duly appointed agent, the Commissioner or agent is authorized to collect all money due the State trust company, and to do any other acts necessary to conserve its assets and property, and shall proceed to liquidate the affairs thereof, as hereinafter provided. The Commissioner, or a duly appointed agent, shall collect all debts due and claims belonging to the State trust company, and, by order of the court, may sell, compromise, or compound any bad or doubtful debt or claim or sell the real and personal property of the State trust company on any terms provided by the order. Where the sale is made under power contained in any mortgage or lien bond or other paper wherein the title is retained for sale and the terms of sale set out, sale may be made under that authority.

(b) Upon taking possession of any State trust company under this section, the Commissioner, or the duly appointed agent, shall have the possession and the right to the possession of all the property, assets, chooses in action, rights, and privileges of the State trust company, including the right to resign the trust or exercise the power in all papers executed to secure the payment of money in any form in which the State trust company has been named as trustee or pledgee. The property right and privileges shall vest in the Commissioner or duly appointed liquidating agent absolutely, for the purpose of liquidating, selling, or conveying the property right and privileges, together with all other incidental rights, privileges, and powers necessary for the right of conveyance and sale. Upon the motion made, the State trust company or any person interested may be heard, but the judge hearing the motion shall enter an order as in the judge's discretion will best serve the parties interested.

(c) The officers and directors of any State trust company, or any State trust company that is in liquidation as provided by law, shall not hereafter exercise any powers herein declared to be vested in the Commissioner or the duly appointed liquidating agent.

§ 53-397. Bond of the commissioner; surety; condition; minimum penalty.

Upon taking possession of any State trust company, the Commissioner, or a duly appointed agent, shall execute and file a bond payable to this State, with some surety company as surety thereon, with the clerk of the superior court of the county where the State trust company is located, conditioned upon the faithful performance of all duties imposed by reason of the liquidation of the State trust company by the Commissioner, or a duly appointed agent, assisting in the liquidation of a State trust company, the penal sum of the bond to be fixed by order of the Commissioner, which in no case shall be less than two hundred fifty thousand dollars (\$250,000). Any person interested, by motion in the pending action, shall be heard by the resident or presiding judge of the superior court as to the sufficiency of the bond. The judge hearing the motion may fix the bond.

§ 53-398. Inventory.

Within ninety (90) days after the filing of the notice of the taking possession of a State trust company in the office of the clerk of the superior court, the Commissioner, or a duly appointed agent, shall file an inventory of the assets and liabilities of the State trust company. A copy of the inventory shall be filed with the clerk of the superior court in the pending action and a copy shall be kept on file in the State trust company. The inventory shall be open for inspection during the usual business hours; provided that nothing herein shall require the State trust company to remain open unnecessarily.

§ 53-399. Notice and time for filing claims.

Notice shall be given by advertisement once a week for four consecutive weeks in a newspaper published in the county where the State trust company is located, or if no newspaper is published in the county, then in some newspaper having a general circulation in the county, calling on all persons who may have claims against the State trust company to present them to the Commissioner at the office of the State trust company, and within the time to be specified in the notice which time shall not be less than 90 days from the date of the first publication. A copy of this notice shall be mailed to all persons whose names appear as creditors upon the books of the State trust company. Affidavit by the Commissioner, or agent mailing the notice, to the effect that the notice was mailed shall be conclusive evidence thereof.

§ 53-400. Power to reject claims; notice; affidavit of service; action on claims.

(a) If the Commissioner doubts the validity of any claim, the Commissioner may reject the claim and serve notice of the rejection upon the claimant, either personally or by certified mail, and an affidavit of the service of the notice shall be filed in the office of the clerk of the superior court in the pending action and shall be conclusive evidence of the notice. Any action or suit upon rejected claim shall be brought by the claimant against the Commissioner in the superior court of the county in which the State trust company is located within 90 days after service, or the action or suit shall be barred. Objections to any claim not rejected by the Commissioner may be made by any person interested by filing the objection in the pending action and by serving a copy thereof on the Commissioner. The Commissioner, after investigation, shall either allow the objection and reject the claim, or disallow the objection. If the objection is not allowed

and the claim not rejected, the Commissioner shall file a notice in the pending action. Within 10 days after notice is filed, the person filing objection by motion in the pending action may question the validity of the claim and the questions of law and issues of fact shall thereupon be determined as in other civil actions. A copy of the notice that the objection is not allowed shall be served upon the person who submitted the claim or deposit.

(b) As used in this section, "Commissioner" includes the Commissioner's duly appointed agent.

§ 53-401. List of claims presented and deposits; copies; proviso.

Upon the expiration of the time fixed for presentation of claims, the Commissioner, or the duly appointed agent, shall make a full and complete list of the claims presented, including and specifying any claims that have been rejected. One copy shall be filed in the office of the clerk of the superior court in the pending action, and one copy shall be kept on file with the inventory in the office of the State trust company for examination. Any claim that may be presented after the expiration of the time fixed for the presentation of claims in the notice hereinbefore provided shall, if allowed, share pro rata in the distribution only of those assets of the State trust company in the hands of the Commissioner, and undistributed at the time the claim is presented. Provided, that when it is made to appear to the judge of the superior court, resident, or presiding in the county, that the claim could not have been filed within the period, the judge may permit those creditors or depositors who subsequently file their claim to share as other creditors.

§ 53-402. Declaration of dividends; order of preference in distribution.

At any time after the expiration of the date fixed by the Commissioner, or the duly appointed agent, for the presentation of claims against the State trust company, and from time to time thereafter, the Commissioner, after the payment of expenses and priorities, may declare and pay dividends to the shareholders and other creditors of the State trust company. Dividends may be declared when and as often as the available funds shall be sufficient to pay ten percent (10%) of all claims entitled to share in the dividends. In paying and calculating dividends, all disputed claims shall be taken into account, but no dividend shall be paid upon the disputed claims until the claims have been finally determined. The following shall be the order and preference in the distribution of the assets of any State trust company liquidated hereunder:

- (1) Taxes and fees due the Commissioner for examination or other services;
- (2) Wages and salaries due officers and employees of the State trust company, for a period of not more than four months;
- (3) Expenses of liquidation; and
- (4) Amounts due creditors other than stockholders.

The word "asset" used herein shall not be deemed to include bailments or other property to which the State trust company has no title. A statement of all dividends paid shall be filed in the office of the clerk of the superior court in the pending action, and the statements shall show the expenses deducted and the disputed claims in determining the dividend.

§ 53-403. Deposit of funds collected.

All funds collected by the Commissioner, in liquidating any State trust company, shall be deposited from time to time in a bank as may be selected by the Commissioner and shall be subject to withdrawal by check of the Commissioner.

§ 53-404. Employment of counsel; accountants; and other experts; compensation.

The Commissioner, for the purpose of liquidating State trust companies as herein provided, shall (i) employ any liquidating agents, competent local attorneys, accountants, and clerks necessary to properly liquidate and distribute the assets of a State trust company; (ii) fix the compensation for the agents, attorneys, accountants, and clerks; and (iii) pay the compensation out of the funds derived from the liquidation of the assets of the State trust company. Provided, that all expenditures for the purpose herein provided shall be approved by the resident or presiding judge in the pending action at such time as the expenditure may be reported, and the charges shall be a proper charge and lien on the assets of the State trust company until paid. Payments made by the Commissioner pursuant to this section shall not be subject to the requirements of Article 3 of Chapter 143 of the General Statutes.

§ 53-405. Unclaimed dividends held in trust.

Any unclaimed dividends remaining in the hands of the Commissioner for six months after the order for final distributions shall be held in trust for the several creditors of the liquidated State trust company; and the money so held by the Commissioner shall be paid over to the persons entitled to the money when they furnish satisfactory evidence of their right to the money. In case of doubtful or conflicting claims, the Commissioner may apply to the superior court of the county, by motion in the pending action, for an order from the resident or presiding judge of the superior court directing the payment of the moneys so claimed. Issues of fact raised by motion may, upon request of any claimant, be determined as in other civil actions. Interest earned on any unclaimed dividends so held shall be applied toward defraying the expenses incurred in the distribution of the unclaimed dividends. The balance of interest, if any, shall be deposited and held as other funds to the credit of the Commissioner. After the Commissioner has held the unclaimed dividends in trust under the provisions of this statute for the creditors of the liquidated State trust company for a period of five (5) years, the Commissioner is hereby given the authority to pay the principal amount of the unclaimed dividends to the State Treasurer, to be held by the State Treasurer without liability for profit or interest until a just claim therefor shall be made by the parties entitled thereto. Upon payment of unclaimed dividends to the State Treasurer, the Commissioner shall be fully discharged from all further liability therefor.

§ 53-406. Action by the Commissioner following full settlement.

Whenever the Commissioner has paid all the expenses of liquidation and has paid to each and every creditor of the State trust company, whose claims have been duly

proven and allowed, the full amount of the claims, and has made proper provision for unclaimed and unpaid and disputed claims, and has other assets of the State trust company, the Commissioner shall call a meeting of the shareholders of the State trust company by giving notice thereof by publication once a week for four consecutive weeks in a newspaper published in the county, or if no newspaper is published in the county, then in a newspaper having general circulation in the county, and by mailing a copy of the notice to each shareholder's address as it appears on the books of the State trust company. Affidavit of the mailing of the notice herein required and of the printer as to the publication shall be conclusive evidence of notice hereunder. At the meeting, any shareholders may be represented by proxy and the shareholders shall elect, by a majority vote of the stock present, an agent or agents who shall be authorized to receive from the Commissioner all the assets of the State trust company then remaining in the Commissioner's hands; and the Commissioner shall cause to be transferred and delivered to the agent, or agents, all the assets of the State trust company. The Commissioner shall thereupon cause to be filed in the office of the clerk of the superior court in the pending actions a full and complete report of all transactions, showing the assets of the State trust company so transferred, together with the name of the agent or agents receiving for the assets; and the filing of the report shall act as a full and complete discharge of the Commissioner from all further liabilities by reason of the liquidation of the State trust company. The agent shall convert the assets coming into the agent's hands into cash, and shall make distribution to the shareholders of the State trust company as herein provided. The agent shall file semiannually a report of all transactions with the superior court of the county in which the State trust company is located, and with the Commissioner, and shall be allowed for the services such fees not in excess of five percent (5%), as may be fixed by the court. In case of death, removal, or refusal to act, of any agent or agents elected by the shareholders, the Commissioner shall, upon report of the action on the part of the agent or agents to the superior court of the county in which the State trust company is located, turn over to the superior court for the stockholders of the State trust company, all the remaining assets of the State trust company, file the required report, and be discharged from any further liability to the shareholders as herein provided. The assets, when turned over to the superior court, shall remain in the court until such time as the court by order or the shareholders provide for distribution.

§ 53-407. Annual report of the Commissioner; items included.

The Commissioner shall file, as a part of an annual report to the Governor, a list of the names of the State trust companies of which possession was taken and liquidated; and the Commissioner shall, from time to time compile and make available for public inspection, reports showing the condition of the State trust companies; and the annual report of the Commissioner shall show the sum of unclaimed assets, with respect to each State trust company and shall show all depositories of all sums coming into the hands of the Commissioner under the provisions of this section.

§ 53-408. Compensation of the Commissioner.

The Commissioner, for services rendered in connection with the liquidation of State trust companies hereunder, shall be entitled to actual expenses incurred in

connection with the liquidation of each State trust company, including a reasonable sum for the time of the examiners and other agents of the Commissioner. The expenses shall be a prior lien on the assets of the State trust company liquidated until paid in full, and the Commissioner may adopt rules for fixing the expenses.

§ 53-409. Exclusive method of liquidation.

No State trust company created prior to the effective date of this Article shall be liquidated in any other way or manner than that provided herein.

§ 53-410. Disposition of books and records.

All books, papers, and records of a State trust company that has been finally liquidated shall be deposited by the receiver in the office of the clerk of the superior court for the county in which the office of the State trust company is located, or in any other place as in the receiver's judgment will provide for the proper safekeeping and protection of books, papers, and records. The books, papers, and records herein referred to shall be held subject to the orders of the Commissioner and the clerk of the superior court for the county in which the State trust company was located.

§ 53-411. Destruction of books and records.

After the expiration of five years from the date of filing in the office of the clerk of the superior court of a final order approving the liquidation by the Commissioner of any insolvent State trust company and the delivery to the clerk or into the clerk's custody of the records of the State trust company, the order may be destroyed by the clerk of the superior court.

After five years from the filing by the Commissioner of a final report of liquidation of any insolvent State trust company, the Commissioner, by and with the consent of the State Banking Commission, may destroy the records of any insolvent State trust company held in the office of the Commissioner in connection with the liquidation of the State trust company. However, in connection with any unpaid dividends, the Commissioner shall preserve the records or other evidence of indebtedness of the State trust company with reference to the unpaid dividends until the dividends have been paid.

§ 53-412. Trust terminated on insolvency of State trust company.

Whenever any State trust company appointed trustee in any indenture, deed of trust, or other instrument of like character, executed to secure the payment of any bonds, notes, or other evidences of indebtedness is taken over for liquidation by the Commissioner or by any other legally reconstituted authority, the powers and duties of the State trust company as trustee shall cease and terminate upon petition and the entry of an order of the clerk of the superior court appointing a successor trustee.

§ 53-413. Petition for new trustee.

Any person interested in any trust, either as trustee, beneficiary, or otherwise, may petition the clerk of superior court for a new trustee in all cases of insolvency and liquidation provided in this Article. The petition shall be verified and shall state the petitioner's interest. The clerk of superior court shall enter an order directing service on all persons having an interest in the trust to appear and show cause within 30 days from the date of service why a new trustee should not be appointed. The notice may be served personally or by publication in a newspaper in the county where the petition is filed or in an adjoining county if no newspaper is published in that county.

§ 53-414. Publication and notice.

The notice shall be published in the manner required by law for service of summons by publication and shall set forth the names of the parties to the indenture deed of trust, or other instrument, the date thereof, and the place or places where the instrument is recorded.

§ 53-415. Appointment where no objection made.

If, upon the day fixed in the notice, no person appears and objects to the appointment of a substitute trustee, the clerk, shall, upon any terms the clerk deems advisable and in the best interest of all parties, appoint some competent person, or corporation authorized, substitute trustee. The substitute trustee shall be vested with and shall exercise all the powers reconferred upon the trustee named in this instrument.

§ 53-416. Hearing upon objection.

If objections are made to the appointment of a new trustee, the clerk shall hear and determine the matter, and from the clerk's decision, an appeal may be prosecuted as in the case of special proceedings generally.

§ 53-417. Registration of final order.

The final order of appointment of a new trustee shall be certified by the clerk of the superior court in an order that shall be recorded in the office of the register of deeds in the county or counties in which the instrument under which the appointment has been made was recorded, and a notation of the order shall be entered by the register of deeds on the margin of the record where the original instrument was recorded.

§ 53-418. Petition and order applicable to all instruments.

The petition and the order appointing a new trustee may include, relate, and apply to any number of indentures, deeds of trust, or other instruments wherein the same trustee is named.

§ 53-419. Additional remedy.

G.S. § 53-413 and G.S. § 53-418 shall be in addition to and not in substitution for any other remedy provided by law.

§ 53-420. Report to the Secretary of State.

The Commissioner shall on or before the first day of each year thereafter file with the Secretary of State a report showing all State trust companies under liquidation in this State, and the names of any auditors, together with the amounts paid to them for auditing each of the State trust companies, and the names of any attorneys employed in connection with the liquidation of the State trust companies, together with the amount paid or contracted to be paid to each of the attorneys. If any attorney has been employed on a fee contingent upon recovery, the report shall state in substance the contract.

Subpart C. Conservatorship.

§ 53-421. Provisions for conservator; duties and powers.

When the Commissioner deems it necessary in order to conserve the assets of a State trust company for the benefit of clients, creditors, and other customers, the Commissioner may appoint a conservator for the trust company and require of the conservator a bond with any surety the Commissioner deems necessary and proper. The conservator, under the direction of the Commissioner, shall take possession of the books, records, and assets of every description of a State trust company placed under conservatorship and take actions necessary to conserve those assets pending further disposition of its business as provided by law. The conservator shall have all rights, powers, and privileges, subject to the approval by the Commissioner, now possessed by or hereafter given to the Commissioner under the provisions for involuntary dissolution and liquidation in this Article. All expenses of the conservator shall be paid out of the assets of the State trust company under conservatorship and shall be a lien thereon which shall be prior to any other lien provided by law. The compensation of the conservator shall be determined by the Commissioner and shall be based on the time and experience of the conservator and the complexity of the conservatorship.

§ 53-422. Examination.

The Commissioner shall examine the affairs of a State trust company placed under conservatorship in the manner and form necessary for the Commissioner to determine the financial condition of the company.

§ 53-423. Termination of conservatorship.

If the Commissioner is satisfied that it may be safely done, the Commissioner may terminate the conservatorship of a State trust company and permit the company to resume the transaction of its business, subject to the terms, conditions, restrictions, and limitations the Commissioner prescribes.

§ 53-424. Criminal liabilities of conservator.

The conservator appointed pursuant to the provisions of this Article is subject to the provisions of and to the penalties prescribed by G.S. § 53-359.

§ 53-425. Naming of conservator not liquidation.

No power conferred in this Article upon the Commissioner, when exercised, shall be deemed as an act of possession for the purposes of liquidation; and whenever the Commissioner shall, with reference to any State trust company for which a conservator is appointed, deem that liquidation is necessary, the Commissioner shall exercise the powers for the purposes of liquidation as provided in Subpart B of Part 5 of this Article.

PART 6. Authority, Hearings, Enforcement, and Severability.

§ 53-426. Commissioner to act under authority of the State Banking Commission.

All the powers, duties, and functions granted to or imposed upon the Commissioner by law shall be exercised under the direction and supervision of the State Banking Commission. Wherever provision is made in any law authorizing and permitting the Commissioner to make rules, the words "the Commissioner" shall be construed to mean the State Banking Commission, and the words "State Banking Commission" shall be substituted in the statutes for "Commissioner".

§ 53-427. Commissioner hearings; appeals.

(a) This section does not grant a right to hearing to a person that is not otherwise granted by governing law.

(b) The Commissioner may convene a hearing to receive evidence and argument regarding any matter before the Commissioner for decision or review under this Article. The hearing shall be conducted in accordance with Article 3A of Chapter 150B of the General Statutes.

(c) Except as expressly provided otherwise by this Chapter, a decision or order of the Commissioner may be appealed to the State Banking Commission for review. The Commissioner may affirm, modify, or reverse a decision of the Commission.

(d) Appeals from the State Banking Commission shall be to the Wake County Superior Court and shall proceed pursuant to G.S. 53-92. An appeal to the Wake County Superior Court does not stay or vacate the appealed order unless the court, after notice and hearing, expressly stays or vacates the order.

§ 53-428. Civil enforcement.

The Commissioner may bring any appropriate civil action against any person who the Commissioner believes has committed or is about to commit a violation of this Article or a rule or order of the Commissioner pertaining to this Article.

§ 53-429. Severability.

If any provision of this Article or the application of the provision is found by any court of competent jurisdiction in the United States to be invalid as to any trust institution or other person or circumstance, or to be superseded by federal law, the remaining provisions of this Article shall not be affected and shall continue to apply to any trust institution or other person or circumstance.

Section 2. G.S. 53-2 reads as rewritten:

"§ 53-2. How incorporated.

Any number of persons, not less than five, who may be desirous of forming a company and engaging in the business of establishing, maintaining, and operating banks of discount and deposit to be known as commercial banks, ~~or operating banks engaged in doing a trust and fiduciary business,~~ shall be incorporated in the manner following and in no other way; that is to say, such persons shall, by a certificate of incorporation under their hands and seals set forth:

(1) The name of the corporation; no name shall be used already in use by another existing corporation organized under the laws of this State or of the Congress, or so nearly similar thereto as to lead to uncertainty or confusion.

(2) The location of its principal office in this State.

(3) The nature of its business, whether that of a commercial bank, trust company, or a combination of both such classes of business.

(4) The amount of its authorized common capital stock, the number of shares into which it is divided, the par value of each share; and the amount of common capital stock with which it will commence business. The amount of capital required to charter a bank shall be determined as herein set forth by the Commissioner of Banks who shall give due consideration to (i) the population of the proposed bank's trade area, (ii) the total deposits of those depository financial institutions already operating in the proposed bank's trade area, (iii) the economic conditions and outlook within the proposed bank's trade area, (iv) the business experience and reputation of the proposed bank's management, (v) the business experience and reputation of the proposed bank's incorporators and proposed directors, (vi) the type and nature of business activities proposed to be engaged in, and (vii) the proposed bank's projected deposit growth and profitability. Except as otherwise provided, the amount of common capital stock required to charter a bank shall not be less than two million dollars (\$2,000,000); provided, however, such amount of capital may be increased or decreased in the discretion of the Commissioner of Banks who, after considering the above enumerated criteria, determines that a greater capital requirement is necessary or that a smaller capital requirement will provide a sufficient capital base. In addition to the required capital, every bank shall have a paid in surplus of at least fifty percent (50%) of its common capital stock. The capital and paid in surplus required to charter a bank shall be exclusive of any organizational expenses. This subdivision shall not apply to banks organized and doing business prior to its adoption or amendment; provided, however, the Banking Commission is hereby authorized and directed to adopt rules and regulations to keep any

original required minimum capital funds intact to the end that they remain in and with the bank as a protection for depositors.

(5) The names and post-office addresses of subscribers for stock, and the number of shares subscribed by each; the aggregate of such subscriptions shall be the amount of the capital with which the company will commence business.

(6) Period, if any, limited for the "duration of the company."

Section 3. Trust companies organized under Article 1 of Chapter 53 of the General Statutes shall hereafter be governed by this Article, and these companies may apply to the Commissioner for authority to amend their articles of incorporation or to take such other steps as may be necessary or appropriate to conform to the provisions hereof. The Commissioner shall allow a period of up to one year for this transition.

Section 4. This act becomes effective October 1, 2000, and applies to acts or omissions occurring and agreements or contracts entered into on or after that date.

A Summary of Proposed Trust Company Legislation

The Office of the Commissioner of Banks proposes the addition of an Article 23 to Chapter 53 of the General Statutes. This new article would strengthen and modernize the laws governing trust business on an interstate basis and provide express authority for the formation and regulatory oversight of nonbank (nondepository) trust companies, including private trust companies, often referred to as family trust companies.

The new article is divided into six parts: *Part 1* (Definitions); *Part 2* (Multistate Trust Institutions Act); *Part 3* (State Trust Institutions Charter Modernization Act); *Part 4* (Enforcement Actions); *Part 5* (Dissolution, Receiverships, and Conservatorship); and *Part 6* (Authority, Hearings, Enforcement, and Severability).

Part 1. Definitions

Fifty-nine terms, which were used throughout Article 23, are defined. The most important are "acting as a fiduciary," G.S. § 53-290(a)(2), "trust business," G.S. § 53-290(a)(51), and "unauthorized trust activity," G.S. § 53-290(a)(56). Trust business includes a broader range of trust institution activities than just "acting as fiduciary."

Part 2. Multistate Trust Institutions Act

Subpart A expresses the intent of this Act. It is to permit banks and other depository institutions, foreign banks, and trust companies to engage in the trust business on a multistate and international basis to the extent that it is consistent with safe and sound practices for the protection of consumers, clients, and other customers of a trust institution. G.S. § 53-291.

Subpart B limits those companies which may act as a fiduciary in North Carolina to state trust companies, state and national banks, state and federal savings institutions, multistate banks with branches located in North Carolina under the authority of our interstate branching laws, and out-of-state trust companies and foreign banks licensed to maintain a trust office in this State by the Commissioner of Banks. G.S. § 53-293.

Also, certain activities, which may be closely related to a trust and fiduciary business, are expressly exempt from the coverage of Article 23. They include acting as an agent for a trust institution, professional services rendered by accountants, attorneys and real estate brokers, securities transactions governed by state and federal securities laws, and the sale or administration of insurance products by agents duly licensed by the Department of Insurance. Other exceptions include the lawful sale of prepaid funeral benefits, acting as trustee for a public, private or independent college or university, including affiliated entities, and trusteeships under deeds of trust made for the purpose of securing payment of a debt or performance of another act. G.S. § 53-294.

The remainder of Subpart B, G.S. §§ 53-295 through 297, permits North Carolina trust institutions to conduct a fiduciary business in another state or country, and permits nonresident banks and trust companies to conduct a trust business in North Carolina on a reciprocal basis. Both resident and nonresident trust institutions are permitted to register or reserve any name with the Secretary of State in connection with this trust business provided that it is not misleading to the public.

Subpart C, G.S. §§ 53-298 through 302, permits North Carolina trust companies to exercise any powers incidental or necessary to their business; expressly authorizes them to engage in a trust business in each office permitted by this law provided, however, their activity in another state is governed by host state law. Each North Carolina trust company is required to have and continuously maintain a principal office in this State. They may acquire and maintain trust offices or representative trust offices anywhere in North Carolina upon thirty (30) days notice to the Commissioner. The Commissioner has the authority to deny these offices if the company does not have sufficient financial resources to do so, or the proposed office would be contrary to the public interest. Finally, G.S. § 53-302 permits North Carolina trust institutions, banks and trust companies, to establish and maintain new trust offices or representative offices or acquire and maintain an office in another state. Again, there is a notice of procedure to the Commissioner who must also take into consideration the views of the bank supervisory agent in the host state.

Subpart D of the Multistate Trust Institutions Act provides that nonresident banks and trust companies may establish trust offices, trust branches and trust representative offices in North Carolina on a reciprocal basis. In other words, banks and trust companies from another state may put offices here provided the home state of the nonresident bank or trust company allows a North Carolina bank or trust company the same privileges. There is an application process that the Commissioner of Banks must grant or deny within 60 days. Nonresident banks or trust companies doing business in North Carolina must comply with North Carolina law. The Commissioner of Banks has authority to examine nonresident banks and trust companies doing business here (with the exception of federally chartered banks and thrifts), and is given authority to require periodic reports and the authority to enter into cooperative agreements, assess regulatory fees and share those fees jointly with other state or regulatory agencies. See, G.S. §§ 53-303 through 313.

Part 3. State Trust Institutions Charter Modernization Act

Subpart A designates the purpose of this Act which is to provide for the chartering of trust companies in North Carolina and permits them to act as a fiduciary and otherwise engage in the trust business. G.S. § 53-314. It also expressly allows any person residing in North Carolina to designate any trust institution to act as a fiduciary and allows a trust client to designate either North Carolina, or a state where affected clients reside, or the state where the trust institution has its principal office, as the state whose laws govern the

agreement between the trust institution and the client. This same choice of governing law is made available with regard to fiduciary investments. See, G.S. §§53-315 through 317.

The new law further provides that any person acting as trustee or as any other fiduciary may delegate investment, management or administrative functions if that person exercises reasonable care, judgment and caution. Also, it allows affiliates of a trust company to provide services and be compensated for those services if it is allowed by the trust or fiduciary instrument, as authorized by court order, authorized in writing by each affected client, or the standards of G.S. §53-318 are met -- that is, the exercise of reasonable care, judgment and caution. Fees paid to an affiliate must be competitive with fees charged by nonaffiliates. See, G.S. §53-319.

An affiliate agreement must be in writing and fully disclosed to the client. Additionally, a trust company must disclose any potential conflicts of interest not less than 48 hours prior to entering into any trust or fiduciary agreement, or if it has not been disclosed at that time, the client has the right to terminate the agreement without penalty within three or more business days. See, G.S. §§ 53-320 and 321.

Subpart B expressly permits the incorporation of trust companies and sets out the factors to be considered by the Commissioner of Banks in determining whether or not to approve the application for a charter. They include the markets to be served, sufficiency of capital, anticipated volume of business, experience, character, competence and integrity of the proposed officers and directors, experience, ability, competence and integrity of principal shareholders (those owning ten percent or more of the outstanding shares), and whether or not the organizers are acting in good faith. See, G.S. § 53-325.

There is a notice and application process, and an investigation of applicants. Any decision in the matter by the Commissioner is appealable to the State Banking Commission. See, G.S. §§ 53-326 and 327.

The minimum capital required to charter a trust company is three million dollars (\$3,000,000). The Commissioner may, however, increase or decrease the minimum statutory capital after taking into consideration a specific finding. Generally, they include the nature and type of business conducted, nature and degree of liquidity and assets held in a corporate capacity, amount of fiduciary assets held in a management, the type of these assets, complexity of fiduciary duties and degree of discretion undertaken, competence and experience of management, extent and adequacy of internal controls, presence or absence of annual unqualified audit by an independent CPA, reasonableness of a business plan, and the existence and adequacy of insurance obtained or held by a trust company for the purpose of protecting its clients, beneficiaries, and grantors. See, G.S. § 53-329. The remainder of Subpart B deals principally with administrative matters regarding amendments to the articles of incorporation and the trust company's capital structure. See, G.S. §§ 53-330 through 334.

Subpart C provides a trust company with the authority to make certain investments and loans. Generally, without the prior written approval of the Commissioner, a trust company may not directly or indirectly invest in facilities, furniture, fixtures and equipment in excess of its "capital" (which is the par value times the number of shares issued). Also, real estate acquired for future expansion and not improved and occupied within three years of the date acquired, ceases to be trust company facilities unless approved by the Commissioner. A trust company may not otherwise acquire real estate unless it is necessary to avoid or minimize a loss or a loan where an investment was previously made in good faith, unless approved by the Commissioner. Other real estate acquired must be disposed of within five years unless it is a period of time it is extended by the Commissioner. See, G.S. §§ 53-335 and 336.

Subpart C provides that a trust company may invest its corporate funds in any type or character of equity or investment securities provided, however, at least 40% of its minimum capital (the par value of issued and outstanding shares) must be kept in unencumbered cash, cash equivalents and readily marketable securities. Investments and equity in investment securities in any one issuer, obligor, or maker, held by a trust company for its own account may not exceed 15% of its capital. This limitation does not apply to investments in bonds or other general obligations of a state, agency or political subdivision of the State, the United States, or any agency or instrumentality of the United States (and other enumerated investments). See, G.S. § 53-337.

The remainder of Subpart C permits a trust company to invest in subsidiaries (up to a maximum of 15% of its capital of a single subsidiary), make investments in mutual funds, but it is prohibited from investing its funds in trade or commerce by buying, selling or otherwise dealing in goods or by owning or operating a business not part of the trust company business (except as necessary to fulfill a fiduciary obligation to a client). See, G.S. §§ 53-338 through 342.

Finally, trust companies are not authorized to make loans and engage in lease financing transactions, except in very limited situations is considered a loan or extension of credit and is subject to the same limitations. See, G.S. §§ 53-342 and 343.

Trust companies may deposit trust fund with itself provided that they are adequately secured. They may also establish common investment (trust) funds. Without the prior written approval of the Commissioner a trust company may not have liabilities outstanding more than five times its minimal capital and may not pledge or create a lien on any of their assets, except to secure the repayment of money borrowed. Deeds, conveyances and pledges or contracting violations of this section are null and void. See, G.S. §§ 53-344 through 347.

Subpart D provides a comprehensive statutory scheme, consistent with North Carolina corporation law, for the establishment of bylaws, appointment of the board of directors, requires that the board meet at least quarterly, provides for a process to protest mergers and acquisitions, and other normal corporate functions. Again, these are consistent with North Carolina law except where there are special requirements for a regulated financial institution. See, G.S. §§ 53-348 through 372.

Subpart E expressly authorizes the formation of private trust companies. A private trust company is a corporate fiduciary that restricts its trust business to members of a specific family, or entities owned by family members. This subpart provides for an application process, examination authority, restriction against change of control, authority to provoke private trust company status and notice of revocation or exemption. Additionally, G.S. § 53-375 provides authority for a private trust company to terminate its private status and commence transacting business with the general public, provided it meets all the standards of a public trust company. As a general rule, a private trust company is exempted from the minimum capital requirement of three million dollars (\$3,000,000), can have a smaller board of directors, and is exempted from the investment and loan limitations imposed on public trust companies. See, G.S. §§ 53-373 through 375.

Part 4. Enforcement Actions

Part 4 is composed of two subparts -- A and B. Subpart A provides that the Commissioner of Banks has supervisory and examination authority over trust companies doing business in North Carolina and for the cost of such shall assess them an annual fee of six thousand dollars (\$6,000) plus \$1.00 per \$100,000 of trust assets, exclusive of real estate carried as such. This assessment formula is consistent with the manner in which banks and trust companies are currently assessed pursuant to G.S. § 53-122. See, G.S. §§ 53-376 through 378.

Subpart B provides enforcement authority which includes the authority to issue administrative orders, provides a notice and opportunity of a hearing consistent with Article 3A of Chapter 150B of the North Carolina General Statutes, the Administrative Procedures Act as it applies to the Office of the Commissioner of Banks, provides the Commissioner with subpoena power, authorizes the removal of director's officers and employees found to be dishonest or incompetent, after a notice and opportunity to be heard. Finally, it provides that any decision made by the Commissioner is subject to review by the State Banking Commission that may assess additional penalties.

Part 5. Dissolution and Receivership; Conservatorship

Subpart A provides that upon the vote of two-thirds of the shareholders, a trust company may elect to dissolve and liquidate. Dissolution and liquidation statutes are set forth with great specificity. See G.S. 53-384 through 389.

Subpart B provides a very detailed procedure for the involuntary dissolution and liquidation of a trust company. The most important matter to be considered is the fact that trust companies, unlike banks, are not insured by the Federal Deposit Insurance Corporation (FDIC). Therefore, if it becomes necessary to take over and dissolve a trust company, that task must be completed by the Commissioner of Banks or his designated agents. G.S. 53-390 provides the statutory grounds upon which the Commissioner make take possession of the business and property of a trust company. These grounds include violation of the charter or bylaws, conducting business in an unauthorized or unsafe manner, if the Commissioner finds them to be in a hazardous condition (a statutory defined term), if the trust company's capital becomes impaired, the company otherwise becomes insolvent, if it neglects or refuses to comply with the terms of a duly issued lawful order of the Commissioner, has refused, upon demand, to submit it records, affairs and concerns for examination by the Commissioner or has made a voluntary assignment of its assets to its trustees. Again, Subpart B sets forth with great specificity the procedures that must be followed by the Commissioner to effect the involuntary dissolution of a trust company. These procedures are supervised, for the most part, by the Superior Court. See, G.S. §§ 53-390 through 420.

Subpart C provides authority for a conservatorship. When the Commissioner deems it necessary in order to conserve the assets of a trust company for the benefit of clients, creditors and other customers, the Commissioner may appoint a conservator and require of that conservator a bond with surety the Commissioner deems necessary and proper. G.S. §§ 53-421 through 425 sets forth the statutory requirements of a conservator.

Part 6. Authority, Hearings, Enforcement, and Severability

Sections 53-426 through 53-429 confirms that the Commissioner acts under the authority of the State Banking Commission, provides for hearings and appeals consistent with the North Carolina Administrative Procedures Act, provides civil enforcement authority and severability provision in the event any portion of this Article is found to be null or void.

Sections 2, 3, and 4 (of the proposed bill)

Section 2 amends G.S. § 53-2 by deleting the authority of a trust company to be organized as a bank. It is the recommendation of the Commissioner that in the future all trust companies be organized under Article 23 of Chapter 53.

Section 3 gives the trust companies previously organized in North Carolina as special limited purpose bank up to one year to amend their articles of incorporation or to take such steps as may be necessary for them to conform to the provisions of the new Article 23.

Finally, Section 4 of the bill makes this Act effective October 1, 2000.

